

(2000) 02 KL CK 0069
In the High Court Of Kerala
Case No : W.A. No. 969 of 1999

C.M. Joseph

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 47

Citation : (2000) 2 KLJ 595

Hon'ble Judges : P.K. Balasubramanyan, J;K.A. Abdul Gafoor, J

Bench : Division Bench

Advocate : P.C. Chacko and Roy Chacko, for the Appellant;

Final Decision : Dismissed

Judgement

Balasubramanyan, J.—The appellant herein is the petitioner in O.P.7764 of 1995. The appellant had acquired the right under the Abkari Act to run a number of arrack shops in Mattannur Range during the abkari year 1981-82. The appellant defaulted in paying the kist agreed upon. Disputes were raised. Finally the Supreme Court of India in Assistant Excise Commissioner v. Issac Peter (1994 (1) KLT 698 (SC)) held that licencees like the appellant are not entitled to any remission of the kist or abatement in the licence fee and other amounts payable by them under the contract. The Supreme Court also held that contractors like the appellant were not entitled to get out of the obligation undertaken by them under the contract entered into with the State in accordance with the Kerala Abkari Act and the Kerala Abkari Shops (Disposal in Auction) Rules. Thereafter recovery proceedings were initiated against the appellant. It is then that the appellant filed the Original Petition before this court invoking Article 226 of the Constitution of India praying for the issue of a writ of certiorari and to quash the notice issued under the Revenue Recovery Act concerning interest in between the period 24.8.1981 and 22.2.1994 on the kist payable by the appellant and others in terms of the contract and the concerned Rules. The ground raised was that the liability to pay interest arises only in case there was default in payment of kist.

Since there was an interim order of court staying the recovery, there will be no liability to pay interest. Thus the only ground raised was that since there was an intervention by the court regarding the payment alleged to be due from the appellant and others, the liability to pay interest had not been incurred and hence the revenue recovery could not be for the interest. Pending the Original Petition the appellant and others also filed C.M.P.32643 of 1998 praying for an amendment of the Original Petition by seeking a declaration that the State Government was bound to adjust the payments made pursuant to the interim order of the Supreme Court and payments made subsequent to the order of this court in an interim application, towards the kist arrears and then only towards interest on the kist dues. The learned Single Judge relying on the decisions of the Supreme Court in Kerala State Electricity Board through its special officer (revenue) and Another Vs. M.R.F. Limited and Others, , in Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others, and in Gurusharan Singh v. New Delhi Municipal Committee (1996) 2 S.C.C.459 held that the fact that a stay was granted pending a challenge would not exonerate a party like the appellant from paying interest on the amount due in terms of the contract and in terms of the relevant rules. This part of the finding rendered by the learned Judge was in fact not seriously disputed before us by learned Senior Counsel appearing for the appellant. The learned Single Judge also held that the appellant cannot insist on appropriation of the amount paid first towards the kist amount due and not towards the interest due on the kist amount. It is the entitlement of every creditor to appropriate payments made first towards the liability for interest and then only towards the principal due. The appellant and others have not made available any material before this court to show that they had made the payments by insisting that it should be first appropriated towards the kist amount. The fact that in the interim order the appellant and others were directed to pay 50% of the kist amount due as a condition for stay does not amount to a direction that the payments made must be credited towards the kist amount first and not towards the interest due. The only pleading in that regard in the application for amendment is the following:-

The remittance was towards the principal sum. No part of the payment was intended towards interest on kist dues. In the view of the common order of the Supreme Court and of this Hon"able Court in CMP 13381/95 coupled with mode of tender of the amount State is bound to give credit to the said payment first towards the kist dues and then only towards interest notwithstanding the provisions in the Abkari Rules.

The learned Single Judge referred to Rule 6(25) of the Abkari Shops (Disposal in Auction) Rules and came to the conclusion that the State was entitled to make the appropriation first towards the interest due on the kist amount and only thereafter towards the kist amount due. It is to be noted that the amendment was brought to Rule 6(25) by Notification dt. 17.6.1980 to the effect:

The amount remitted by a defaulter towards arrears shall be adjusted towards

interest due from him in the first instance and the balance if any shall be credited towards the principal amount.

The appellant and others got the right for the abkari year 1981-82 after the above amendment had come into effect. It was in the face of this statutory rule and with eyes open that the appellant and others bid the right to vend arrack in the shops concerned. They defaulted in payment of the kist due. The appellant and others cannot be heard to contend that payments made by them pursuant to interim orders of the Supreme Court or of this court while they were trying to get out of their obligation to pay the kist should first be appropriated towards the kist amount due in the face of Rule 6(25) of the Abkari Rules. We are in agreement with the reasoning and conclusion of the learned Single Judge in that regard. We see no reason to interfere with that decision.

2. The next contention that was raised was that for the period subsequent to 1.4.1986 interest was being claimed at the rate of 18% per annum and this was not justified. We must notice that the interest originally payable was at 9% per annum until 1.4.1981 and rate of interest was increased to 12% per annum from 1.4.1981. That increase operated until 31.3.1986. From 1.4.1986 interest was payable at 18% per annum. The contention was that since the liability was incurred before 1.4.1986, the appellant and others were bound to pay interest only at 12% per annum. The learned Single Judge negated this contention since it was only due to the default of the appellant and others that the kist remained unpaid and they had the benefit of that amount and hence they could not be heard to say that they will not pay the interest as contemplated. The learned Judge also noticed Rule 6(39) of the Abkari Shops (Disposal in Auction) Rules to the effect that: licensee shall be bound by all the Rules which have been passed under the Abkari Act and which may hereafter be made under the said Act or under any law relating to abkari revenue which may hereafter be made

It is clear from the said Rule which was in existence when the appellant and others bid the right to vend arrack for the abkari year 1981-82 and entered into the agreement with the Government, that the appellant and others are bound to pay the interest as enhanced, by the necessary amendment brought to Rule 6(29) of the Abkari Shops (Disposal in Auction) Rules.

3. Under Article 47 of the Constitution of India the State has to endeavour to bring about prohibition and the main excuse offered by the Government Pleader on behalf of the State is that there will be considerable loss of revenue if prohibition is brought about. Thus one of the reasons for the State not to carry out the mandate of Article 47 of the Constitution of India is the raising of revenue for the State's activities. It is in that context that it is stipulated that abkari contractors in default should pay interest at 18% per annum. The rate of 18% per annum considering the prevalent rate of interest cannot be said to be in any manner unreasonable or unconscionable. Under such circumstances even on a question of principle, it does not appear to us that there is anything unjust in

the demand of interest at 18% per annum from the contractors like the appellant for the abkari dues made by them. It cannot be forgotten that the amount was payable towards the abkari year 1981-82 and the appellant and others have been successfully dodging the payment of the amounts due to the State until this day in the new millenium. We are therefore of the view that this is not a fit case where this court ought to exercise its discretionary jurisdiction under Article 226 of the Constitution of India to relieve the appellant and others of their obligation to pay interest. On that ground also the decision of the learned Single Judge is seen to be justified. At the time of hearing, the appellant has filed C.M.P. No. 735 of 2000 seeking to challenge the validity of Rule 6(39) of the Abkari Shops (Disposal in Auction) Rules. We must notice that this Rule was very much in force when the appellant and others bid the right to run the arrack shops in question for the Abkari Year 1981-82. The Rule was very much there when the appellant and others filed the Original Petition leading to this Writ Appeal. No such ground was sought to be raised in the Original Petition. Such a ground was not even specifically raised in the Memorandum of Appeal. The appellant having enjoyed the benefit of the contract entered into by him in the face of that Rule, and his present attempt being to avoid his obligations under that contract, we decline to permit the appellant to raise such a belated challenge. There appears to be no bonafides in the attempt. We therefore refuse to adjudicate on the plea sought to be raised.

We thus find no reason to interfere with the decision of the learned single Judge. We confirm that decision and dismiss this Writ Appeal.