(1965) 12 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Writ Petition No. 104 of 1965

Diua Nath — APPELLANT

Vs

Chairman, Town Area Committee — RESPONDENT

Date of Decision : 13-12-1965

Acts Referred:
Town Area Act, 2011 — Section 24, 33, 34

Citation : AIR 1967 J&K 95

Hon'ble Judges : Syed Murtaza Fazl Ali, J;Janki Nath Bhat, J

Bench : Division Bench

Advocate : R.N. Bhalgotra, for the Appellant; J.L. Sehgal, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhat, J.

In this writ petition the Petitioner claims the following reliefs:

1. That a writ of certiorari be issued, to the Respondent quashing his order dated 5-12-64 and the summary proceedings initiated by him for the

realization of the amount from the Petitioner.

2. That a writ of Madarnus be Issued to the Respondent to follow the procedure under Sections 33 and, 34 of the Town Area Act 2011 to realize

Rs: 7516i50 theâ?? amount of Dharat tax due from die Government department enumerative in Para No; 3.

2. The Petitioner also prays for the issue of any other appropriate writ.

3. The facts relevant to the disposal of this writ petition are as"" follows. The Petitioner was a Dharat contractor of the Town Area Committee

Udhampur (hereinafter to be referred to as the TAC) in the year 1955-56. As against the contract for the previous year 1954-55 which was for

Rs. 20,000/- the Petitioner had to pay on account of Dharat to the TAC a sum of Rs. 33,000/- for that year. The increase in the Dharat amount

was due to the fact that in the year 55-56 the goods belonging to various departments of the Government imported into the town of Udhampur

were also liable to Dharat; they were not so previously according to the Petitioner. The Government departments imported goods into the town

area limits of Udhampur and a' Dharat duty amounting to Rs. 9065/14/-, for that year was recoverable from the Government departments.

Against this amount the Sericulture Depart ment had paid Rs. 524/14/-. Various represent rations were made by the Petitioner to- to 'TAC as well

as to the higher authorities .for recovery of the amount of Dharat due front Government departments and even a recommendation was made by the

TAC to the insister concerned that the arrears due to the contactor on account of the Dharat duty from Government departments be paid to him

'or at least a rebate of, that amount be sanctioned in his favor, but all these attempts bore no fruitful results. On the other hand it is alleged that for a

sum of Rs. 3,000/- which, is due from the contractor"" to the TAC ' com account of his contract money, a writ of demand u/s 33 of. The TAC Act

has been issued against the' Petitioner by the TAC It is to challenge this order that the present writ has been filed

4. Numerous grounds have been taken in the writ petition, but some of them appear to be irrelevant and were not consequently presses! by the

Petitioner's learned Counsel at the time of arguments. His sole contention was that the writ of demand should be quashed or in the alternative the

TAC be' ordered to issue a writ of demand for the money that is due to the contractor from the various Government departments, or again the

contractor be allowed a set off and in this way the writ of demand calling upon the Petitioner to Day Rs. 3000/- as arrears of tax be quashed.

5. This case originally came up before one of us, but was referred to a Division.

6. The learned Counsel for the Petitioner referred to Section 33 of the Town Area Act. This section lays down that on failure of any person to pay

any installment of tax or fee under this Act on or before the, Specified date the Chairman shall cause a writ of demand to be served on the

defaulter. According to the learned, counsel the Chairman TAC is bound to issue a writ of demand against the Government or the departments from whom Dharat money is due to the Petitioner for the contract year 1955-56. According to him this money, i.e., arrear of Dharat or a tax or fee

which is due under react or should be paid to ""him. by issuing a Mandamus to the -Chairman TAC to issue a want of demand foe this amount. We

are afraid this is not the correct interpretation of this section.

Chapter v of the Town Area Act deals with taxation and Section 24 mentions the various taxes that a committee may imposer time to time in any

town or a part there of u/s 32 this tax or fee shall be payable in installments. The Petitioner has taken the Dharat contract of the TAC for the year

55-56. He had to pay the same by installments which fell due on particular dates. He has not paid a certain sum, namely, Rs. 3000/- which he was

bound under the agreement to pay on a specified date and therefore u/s 33, the Chairman of the TAC is competent to issue a writ of demand

against him for this amount. So far there is no dispute. But this section nowhere enjoins upon the Chairman to recover any tax for another person

who is by contract authorized to recover it from people and does not do so. A close perusal of this section shows three things. A writ of demand

can be issued when (1) the person is bound to pay any installment of a tax or fee; and (2) the tax must be livable under the Act; and (3) the faiture

must be to pay the installment' on before the specified date.

Dharat as such is payable immediately"", at the time of the entry of the goods in the Town Area limits. There are no instalments legally permissible

for payment of Dharat. A Dharat contractor may of his own, in his private capacity, not choose to recover the Dharat at. The time of the import of

the goods or may allow credit facilities to the imports or can make any other arrangement he likes with the importers but the question of instalments

under the Act for payment of Dharat duty is foreign to the section and not at all covered by provisions. Furthermore plies if any. installment has

fallen due the installment governs both tax and fee and not only one of them namely tax Therefore the plain language of this section connotes that it

does not apply to case of Dharat.

Moreover as would' appear from the wording of the section"" the amount of installment due must be to the Town Area Committee, not to anybody

else. Here the TAC has auctioned the Dharat tax for the year 1955-56. The Petitioner Has took the contract. After the execution of the agreement

.between the Petitioner and the TAG it is no longer the duty of the TAC to recover the Dharat from ' the contractor except under, the provisions of

Section 39 which will be discussed hereinafter.

7. After taking the contract it is the duty of the contractor to realize the Dharat. The TAC is entitled to recover Dharat money' from the contractor

the, contractor may be benevolent enough not to charge the tax from anybody or any class to persons. with such of conduct the TAC has nothing

to do the contractor may lose in this contract or may make huge profits in either case it is no concern of the TAC there fore in our opinion the

Petitioner cannot as a matter of right demand that the chairman of the TAC should issue a writ of demand for him for a sum of which is due to him

from any the Government or any department of the Government and collect the same for him u/s 33.

8. The Act has, however, made provision for the recovery of Dharat in case of recalcitrant importers. If anybody at the time of importing any

goods in the town area which are liable to Dharat duty refused to pay to the contractor, his agent or servant the artic her imported have to be

seized or so much of the articles as is sufficient in price to satisfy the demand of tax, and if the seizure of articles is made by the contractor or

anybody on his behalf, a report has to be made to the Chair man TAC who can then take necessary satisfy to get the property sold in auction to

satiety the demand. Therefore the assistance of the TAC in case of non-payment of Dharat by any body to the contractor is also guarantees but it

should be availed of at the proper moment and in the proper form. if that TAC as 'matter of right to be its age not done the contractor cannot

demand issue writs s of Demerol for any sums the contractor.

This however does not mean that contractor is not entitled to recover the money he can take such steps under ordinary law as he is advised to the

falling this writ can in no way suggest that the to recover Dharat money from the can take propriety stems subject just exception

9. But we are only concerned at the present moment with the fact whether there is any state on or legal duty cast on the Chairman to issue a writ of

demand against any person who fails to pay Dharat duty to a contractor who has taken Dharat contract for a particular year. We have carefully

gone through; the relevant sections. We do not find that there is any legal obligation in such a case' for lie Chairman TAG to issue a writ of demand

for the Petitioner. The Chairman TAC is perfectly within his rights to issue a writ of demand against' the Petitioner, for any crystal mend or part

thereof of the Dharat money which is still unpaid by him in spite of the fact the date for its payment has elapsed. The Petitioner's is a hard case

because he has trebled the Government departments and al- lowlier those to import goods without impound-the them Even the TAC has

supported him many a time. The Government has prima facie liter undue advantage of the facilities provided to it by the Petitioner. We understand

that an appeal is still pending before the concerned Minister. We trust that the Hon'ble Minister will give due consideration to the claim of the

Petitioner in this behalf. But as a Court of laveveising writ jurisdiction we are unable to any relief to the Petitioner.

10. This petition is therefore dismissed bullion making any order as to costs.