

(2001) 07 KL CK 0001
In the High Court Of Kerala
Case No : Criminal M.C.No. 4024 of 1998

Jojo

APPELLANT

Vs

Executive Officer

RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

Kerala Municipalities Act, 1994 — Section 245(4)
Kerala Panchayat (Taxation and Appeal) Rules, 1963 — Rule 26
Kerala Panchayat Act, 1960 — Section 69(5)

Citation : (2001) 07 KL CK 0001

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : V. Bhaskara Menon, for the Appellant; Ranjith Thampan, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Hariharan Nair, J.—The petitioner in these two cases in one and the same person and the first respondent in the CrI.R.P. is also the same as the respondent in CrI.M.C.No.4024 of 1998. Common questions arise in both these cases and hence they are disposed of through a common order.

2. The petitioner has been running business of distribution of gas cylinders i with regard to cooking gas within the limits of Irinjalakuda Municipality. Alleging that empty cylinders are stacked in a building situated within the limits of Porathisserry Panchayat, the Panchayat assessed the petitioner to professional tax. On finding that restraint proceedings became unsuccessful, prosecution was launched before the Judicial First Class Magistrate Court, Irinjalakuda. The prosecution in respect of the dues for the year 1993-94 ended up in conviction. The appeal filed before the Sessions Court, Trichur, challenging the same also went against the petitioner. The challenge in CrI.R.P. No. 783 of 1999 is of the concurrent finding with regard to criminal liability for non-payment of professional tax levied by the Panchayat for the year 1993-94. The Panchayat continued the assessment for

the subsequent years also. The challenge in Crl.M.C.No.4024 of 1998 is with regard to the prosecution launched to recover the dues for the years 1994-95 and 1995-96.

3. Learned counsel for the petitioner Shri Bhaskara Menon, submitted that the assessments are invalid in so far as the petitioner has not been running any business within the limits of the respondents Panchayat. According to him, the mere stacking of empty gas cylinders cannot be called transaction of a business and it that is so, no business is carried on within the limits of the respondent Panchayat. The learned counsel also drew my attention to the provisions in the Kerala Panchayat Act, 1960 as also of the Kerala Municipalities Act, 1994, which provides for avoidance of double taxation. The contention, therefore is that by pursuing the prosecution in question, the respondent would be able to realise the amount claimed by it, in which case the petitioner will be compelled to pay profession tax not only too the Irinjalakuda Municipality, but also to the respondent Panchayat in respect of one and the same business and that would be double taxation, which is not permitted by either of the statutes.

4. Learned counsel for the respondent Panchayat submitted that the question of validity of the assessment is beyond the scope of the present proceedings before this court and that the petitioner has failed to challenge the validity of the assessment before any of the authorities contemplated under the Panchayat Act and also failed to challenge it in appropriate writ proceedings before this Court. According to the counsel, the question that can be considered in the present proceedings is only whether the petitioner has failed to pay the tax demanded assuming that the assessment orders are valid and binding on the petitioner. During hearing, my attention was drawn by the learned counsel of the petitioner to the decision in *Abraham v. Executive Officer, Peruvanthanam Panchayat* (1996 KLT 115) where it was held that professional tax due from an assessee and paid to one Panchayat is not liable to be paid over again to another Panchayat for the same year; but that order was passed in an Original Petition and not in similar criminal proceedings.

5. Having considered the rival contentions I am of the view that the submission of the learned counsel for the respondent with regard to the limited scope of the present proceedings has to be accepted. It may be that, as contended by the petitioner, he is not transacting business as such in the buildings situated within the limits of the respondent Panchayat. It may also be true that double taxation is not contemplated under the Act, in which case the proper course would be for the Panchayat or the petitioner to approach the Government to apportion the tax between the Municipality and the Panchayat as contemplated in S.69(5) of the Kerala Panchayat Act, 1960 as also S.245 (4) of the Kerala Municipalities Act, 1994. However the present proceedings being criminal in nature and the scope of consideration being not the validity of the assessment, but only the aspect of payment and enforceability of the assessments already passed, I am of the view that it is unnecessary to go into the said contentions raised by the petitioner.

6. It has been made clear by this Court in the decision in Kodakara Panchayat v. Sukumaran (1986 KLT 618) that in such matters the Court where prosecution is launched is not called upon to sit in judgment over the validity of the provisions prescribing the liability. If the accused wants to question the imposition of the dues, he has to challenge it before appropriate authority in accordance with the provisions of the Act and it is not for the provisions of the Act and it is not for the prosecution court to go into that aspect. In Executive Officer v. Velayudhan Nadar (1988 (2) KLT 138) also this Court reiterated that position that the Magistrate before whom the prosecution is launched, is not expected to sit in judgment over the validity of the bye-laws or resolutions on the basis of which the fee was levied or the correctness or propriety of the amount as demanded by the Panchayat. If those aspects are subject of Magisterial scrutiny on the question of correctness and propriety, the working of the local bodies, it was held would become difficult, which will amount to assumption of jurisdiction which the Magistrates are not having under the Act. It was also laid down that a collateral challenge of the levy or its quantitative or qualitative propriety by way of defence in a prosecution without challenging the same before the appropriate forum cannot be entertained. In view of the said position of law, it is idle of the petitioner to contend before the learned Magistrate that the levy itself was invalid. As already mentioned, the remedy of the petitioner lies elsewhere. Viewed from this perspective, I find no justification to interfere with the proceedings pending before the learned Magistrate to collect the levy outstanding as per imposition made by the Panchayat towards professional tax.

The petitioners are without merit. They are accordingly dismissed.