(1979) 07 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4 of 1978

Kalu — APPELLANT

Vs

Board of Revenue and Others — RESPONDENT

Date of Decision : 12-07-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 299
Government of India Act, 1935 — Section 175

Citation : (1979) RLW 526 : (1979) WLN 403

Hon'ble Judges : C.M. Lodha, C.J;Kanta Bhatnagar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

C.M. Lodha, C.J.—This is a writ-petition under Article 226 of Constitution of India whereby the petitioner has challenged the recovery of an amount of Rs. 11879/- from him under the provisions of the Rajasthan Public Demands Recovery Act, 1952 (Act No. V of 1952) (hereinafter to be referred to as the Act) and has prayed that the orders passed by the Additional Collector, Udaipur, dated February 3, 1972, as also the appellate order passed by the Revenue Appellate Authority, Udaipur, dated December 23, 1972, upholding the order of the Additional Collector and the order passed by the Board of Revenue for Rajasthan Ex. 5 dismissing the petitioner''s revision-application be set aside.

2. The relevant facts giving rise to this writ-petition are these : A contract for the excise shop of Hathi Pol City No. 1 was sanctioned for Samvat year 2006 for Rs. 23000/- in favour of the petitioner, against whom a sum of Rs. 11879-, was found to be outstanding. The district Excise Officer. Udaipur, therefore, submitted a requisition for recovery of the said sum to the Collector, Udaipur, u/s 3 of the Act. On receipt of the requisition, the Collector, after satisfying himself that the said amount was recoverable under the provisions of the Act, signed the certificate and issued a notice in the prescribed form to the defaulter Kalu, accompanied by the said certificate, directing the defaulter to deposit the amount

of Rs. 11879/-, or to show cause, if any, within 30 days from the service of the notice as to why the said amount be not recovered. In response to the notice, the defaulter submitted a petition in which he denied his liability for payment of the alleged outstanding dues. It was pleaded, inter-alias, that no written instrument or contract had been executed between the State and the petitioner and, therefore, the amount could not be recovered under the provisions of the Act. The Additional Collector, Udaipur, by his order dated February 3, 1972, (Ex. 3) rejected the objections filed by the petitioner and the certificate was sent to the Tehsildar for execution and realisation of the amount due Aggrieved by the order of the Additional Collector, the defaulter filed an appall before the Revenue Appellate Authority Udaipur, who, by his order dated December 23, 1972 Ex. 4) upheld the order of the Additional Collector and dismissed the appeal The petitioner then filed a revision-petition before the Board which too was dismissed by order dated December 31, 1977 (Ex. 5).

3. The learned Counsel for the petitioner has urged that the amount in question sought to be recovered from the petitioner dies not fall within the definition of the word "public-demand" contained in the Act. It is submitted that the bid given by the petitioner for the ''Theka'' of the liquor shop was accepted on September 30, 1949, when the Rajasthan Administration Ordinance, 1949, was in force and that according to Section 8 and 9 of the Ordinance, which are analogous to Article 299(1) of the Constitution of India, all contracts made for the purpose of the United State of Rajasthan should be expressed to be made by the Raj Pramukh and authenticated by a person authorised u/s 8 to authenticate orders and instruments executed in the name of the Raj Pramukh. This contention of the learned Counsel for the petitioner is that in absence of a written instrument or an agreement evidenced by writing any money payable to the State Government or to a Department cannot be recovered as a public demand. In support of his contention the learned Counsel has relied upon K.P. Chowdhary Vs. State of Madhya Pradesh and Others, and Kirorilal v. The State of MP and Rajasthan 1977 RLW 6.

4. On the other hand, Mr. D.S. Shishodia, learned Government Advocate, has urged that the writ-petition is not maintainable in as much as the petitioner had an alternative remedy by way of a suit u/s 20 of the Act. It has also been argued by him that since the amount is due from him and the petitioner has raised a technical ground to evade payment, no relief should be gr anted to him by this Court in exercise of its extraordinary jurisdiction. As regards the merits of the case, he has contended that the auction-list (Phard Nilami) contains the highest bid offered by the petitioner & acceptance of the same by the Deputy Commissioner, Excise & there is further the endorsement by the surety on the auction-list itself. It is submitted by Mr. Shishodia that the auction list containing the acceptance of the bid by a duly authorised person should be construed as an agreement evidenced by a writing and, conseqently, the outstanding amount should be treated as a public-demand.

5. Section 2(5) of the Act defines ''public-demand'' as under:

"Public demand" means any arrear of money mentioned or referred to in the Schedule to this Act and includes any interest which may by law be chargeable thereon upto the date of the signing of a certificate in respect thereof u/s 4.

THE SCHEDULE

PUBLIC DEMANDS

(See Section 2(5))

(6) Any money payable to the State Government or to a department or an officer of Governmental) Under or in pursuance of written instrument, or

(ii) Under or in pursuance of an agreement evidenced by a writing, a correspondence or otherwise in repayment of any advances or in lieu of any services rendered or supplies made by the Government or such department or officer of Govt.

6. Now, we have to see whether the demand in question falls within the definition of money payable to a Department in pursuance of an agreement evidenced by a writing.

7. In Union of India (UOI) and Others Vs. N.K. Private Limited and Another, the Supreme Court observed as follows:

It is now settled by this Court that though the words ''expressed'' and ''executed'' in Article 299(1) might suggest that it should be by a deed or by a formal written contract, a binding contract by tender and acceptance can also come into existence if the acceptance is by a person duly authorised in this behalf by the President of India.

In Damodaran v. State of Kerala ILR 1969 Ker. 95 it was observed that even if no contracts were entered into in pursuance of the auctions, as soon as the hammer fell, there were concluded contracts between the highest bidders and the State. And the highest bidders became liable too when they started running the trade; and the amounts which they are liable to pay can be collected as arrears of revenue, even in the absence of formal contracts.

8. In Limba Reddy v. The Special Tehsildar for Collection of Forest Revenue, Nizamahad and Anr. 1968 (2) AWR 396 both the sale and the bid list for the lease of right of plucking and collecting Biri leaves in the auction held by the Divisional Forest Officer were signed by the highest bidder as well as by the Divisional Forest Officer. It was held that the sale notice and the bid list amounted to a contract expressed to be made by the Government and, therefore, by the Governor. In that case the Divisional Forest Officer while subscribing his signature to the two documents had not stated that he was doing so on behalf of the Governor, but having regard to the statutory rule prescribing that the sale of the right to collect abnus leaves must be by auction, there can

belittle doubt that he was acting on behalf of the Governor. In these circumstances, the requirements of Article 299 were held to have been satisfied.

9. Now, in the present case, we have the relevant bid list at page 36 of the paper-book produced by the petitioner himself It has been mentioned in the bid list that the petitioner Kalu had agreed to take the contract for Rs. 23000/-, and the endorsement has been anile and signed by Kalu himself Just below the petitioner''s endoresment is the endorsement by the surety. The bid list also contains the signature of the Excise and Customs Commissioner who conducted the auction and accepted the bid. The Stale has filed an affidavit of one Jeewan Singh, who has sworn that he was working as Warehouse Officer in the Excise and Customs Department in the erstwhile State of Mewar and in the United State of Rajasthan in the year 1948-49 and 1950 and that he had been an employee of Excise Department of the erstwhile State of Mewar since 1944 AD. H; has further stated that at present he is working as an upper Division Clerk in the Excise Department at Udaipur. lie has also staff d that he is acquainted with the hand writing of Shri B.L. Bhatnagar, who was the Deputy Commissioner Customs and Excise, Udaipur in 1949, and further that the bid list in question bears the signatures of late Shri B.L. Bhatnagar. He has also sworn in that in the year 1948 the Deputy Commissioner, Excise and Customs was competent to accept the bid. No counter-affidavit has been filed on behalf of the petitioner to controvert the facts stated by Jeewan Singh in his affidavit. Hence, we have to accept the facts stated in the affidavit of Jeewan Singh. It must also be inferred, in these circumstances, that the Deputy Commissioner Excise and Customs who signed the bid list in token of the acceptance of the tender was duly authorised in this behalf. The bid list must be held to be an agreement evidenced by writing. Consequently, we are of opinion that the outstanding in question comes within the definition of the word ''public-demand'' as defined in the Act.

10. Mr H.M. Parekh, learned Counsel for the petitioner, however, placed strong reliance on K.P. Chowdhry''s case (supra) and a Bench decision of this Court reported in Kirorilal v. The State of Madhya Pradesh and the State of Rajasthan (supra) in support of his contention that where a contract between the Government and a private individual is not in the form required by Article 299(1) of the Constitution, it is void and cannot be enforced. At this stage we may point out that in Union of India (UOI) Vs. A.L. Rallia Ram, the Supreme Court held that so long as all the requirements of Section 175(3) of the Government of India Act, 1935 (the same as Article 299(1) were fulfilled the section did not necessarily require the execution of a formal document of agreement. Wanchoo, J. as he then was, speaking for the Court, in C.P. Chowdhry''s case (supra) has also observed that what was said in Rallia Ram''s case applied to the case before him. The result is that the ''full compliance" contemplated in K.P. Chowdhry''s case is only such compliance as is contemplated by the earlier decision in Union of India v. A.L. Rallia Ram, which was approved by Warchoo, J., Here we may also point out that it was observed in K.P. Chowdhry''s case that it was not in dispute that there was never a contract as required by Article 299(1) of the Constitution. The

facts of K.P. Chowdhry''s case do not show that there was acceptance of the bid by a person duly authorised. It may also be pointed out that the case of K.P. Chowdhry was one in which the Divisional Forest Officer was himself not competent to accept the bid as the amount of bid was higher than what he could accept The Chief Conservator of Forests was the authority who had to accept the bid Before the Chief Conservator of Forets could accept the bid, the contractor raised a dispute as to marking of trees and refused to complete the contract. Thereafter the leases were re-auctioned for smaller amounts and the forest authorities sought to recover the deficiencies by proceedings u/s 155(b) of the Madhya Pradesh Land Revenue Code. In these circumstances, their Lordships of the Supreme Court held that there was no contract in accordance with Article 299 of the Constitution and that having regard to the mandatory terms of Article 299(1) no implied contract could be spelled out either. Therefore, they further held that Section 155(b) of the Madhya Pradesh Land Revenue Code, which provided for recovery of moneys due from the Government under any grant or contract or lease as if they were arrears of land revenue had no application. Their Lordships, however, left open the question whether amount could not be recovered under other provisions of the law as arrears of land revenue as that question had not been investigated by the High Court In the present case, the Deputy Commissioner Excise & Customs was undoubtedly the officer who was competent to accept the bid & enter into the contract on behalf of the Government. We are, therefore, of the opinion that in the present case there was a concluded contract between the highest bidder, namely, the petitioner and the State. There is thus no force in the petitioner''s contention.

11. Before parting with the case, we may also observe that the objection by the learned Govt. Advocate that the petitioner had an alternative remedy by way of a suit u/s 20 of the Act is also not without force. We may here reproduce Section 20:

Suits for cancellation or modification of certificates - (1) A defaulter may bring a suit to have a certificate cancelled or modified & for any further consequential relief to which he may be entitled.

(2) Such a suit may be brought at any time within 6 months.-

(a) from the service upon the defaulter of the notice required by Section 6, or

(b) from the date of the determination of a petition denying liability, u/s 8, or

(c) from the date of the protest lodged by him u/s 15, or

(d) from the date of the decision of an appeal filed by him u/s 23A;

Provided that notwithstanding anything contained in this Act and in any other law for the time being in force, the defaulter may in a suit instituted under this section, prove that nothing was due from him on account of the public demand or that the amount due was less than the amout stated in the certificate.

It Is clear from this section that such a suit may be brought within six months from any of the dates mentioned in Clauses (a) to (d) of Section 20(2). It is argued that the petitioner allowed the limitation for a suit to expire & took the easy course of filing this writ petition after the expiry of limitation for the suit A person who has allowed the remedy provided in this special law to be barred, cannot ordinarily seek relief in the extraordinary jurisdiction under Article 226. This is an additional ground which stands in the way of the petitioner for seeking relief in exercise of our extraordinary jurisdiction.

12. This writ-petition, therefore, fails and is hereby dismissed. But there will be no order as costs.

