(1957) 08 KL CK 0011

In the High Court Of Kerala

Case No : O.P. No. 67 of 1957

Kasim Rowther APPELLANT

Vs

Pampady Panchayat and Others RESPONDENT

Date of Decision : 20-08-1957

Acts Referred:

Citation : AIR 1958 Ker 118

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Advocate : T.K. Narayana Pillai and D. Narayanan Potti, for the Appellant; C.K. Sivasankara Panicker and K.K. Prabhakara Kurup, (for No. 1) and Govt. Pleader (for Nos. 2 and 3), for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, J.—The petitioner challenges the right of the Pampadi Panchayat (1st respondent) to demand profession tax from him on the ground that the bye-laws in that behalf (bye-law Nos. 10 to 23) have not been properly framed and should be considered as of no effect. The periods in respect of which the demands are impugned in this petition are the first and second half years of 1955-56 and the first half year of 1956-57.

2. The bye-laws were notified in the Travancore-Cochin Government Gazette dated the 5th January 1954. The opening words of the notification are:

"In exercise of the powers conferred u/s 102 of the Panchayat Act II of 1950 and Rule 138 of the Panchayat Rules 1951, the bye-laws of the following panchayats are approved and notified by the Director, the same having been duly passed by the Panchayats concerned after observing all the formalities as contemplated in Rule 118 of the Panchayat Rules, 1951"".

37 Panchayats are mentioned in the notification and the Pampadi Panchayat is No. 30 of the list.

3. Section 56 of the Travancore-Cochin Panchayats Act, 1950, provides-

"Any Panchayat

(a) after observing such preliminary procedure and rules as may be prescribed;

(b) subject to such bye-laws as may be framed by the Panchayat; and

(c) subject to the previous sanction of Government, may impose, at such rates not exceeding the maxima prescribed, all or any one or more of the following:

(1) a cess on land other than any land or class of lands which Government may, by notification in the Gazette, exempt;

(2) any rate, tax, cess or any licence or other fee for the discharge of the duties under this Act" and Rule 118 of the Traivancore-Cochin Panchayat Rules, 1951:

"(1) When a Panchayat proposes to levy a rate, tax, cess or fee, it shall publish the proposal by beat of tomtom in the Panchayat area and by a notice affixed in the office of the Panchayat specifying a date not earlier than 15 days from the date of such publication on which the Panchayat will take the proposal into consideration.

(2) On such date or any later date to which the meeting may be adjourned, the Panchayat shall consider any objection or suggestion made Orally or in writing by any person interested and may finally reject the proposal or sanction the proposal as originally made or in any amended form, provided that if the Panchayat considers that the rates taxes, cesses or fees originally proposed should be enhanced, fresh notice shall be given before the enhancement is finally decided on.

(3) Every such proposal to levy a rate, tax, cess or fee shall be forwarded to the Director for submission to Government. After obtaining the necessary sanction of Government and after due publication in the Gazette by the Director, the Panchayat, may impose and collect the rate, tax, cess or fee".

4. In view of Section 56(c) of the Act and Rule 118 (3) there can be no doubt that the previous sanction of the Government is necessary for the validity of any bye-law imposing a rate tax cess or licence or other fee under the Act. According to the counsel for the petitioner no such sanction has been obtained for the bye-laws concerned and the learned Government Pleader is unable to contradict the statement.

5. The 2nd respondent before me is the Director of Local Bodies, Tilvandrum. He has not chosen to file any affidavit denying the allegation in the affidavit in support of the petition to the effect that the previous sanction of the Government has not been obtained.

6. In the light of what is stated above I must hold that the demands for profession tax for the three half years mentioned above are unsustainable and have to be quashed. Order accordingly. No costs.