
(2002) 07 KL CK 0063
In the High Court Of Kerala
Case No : O.P. No. 12430 of 2002

Kassim Rawther

APPELLANT

Vs

Nedumkunnam Grama Panchayat

RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Panchayat Raj (Issuance of Licence and Control of Public and Private Markets) Rules, 1996 — Rule 7, 8

Citation : (2002) 07 KL CK 0063

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : T.K. Abdul Latheef, for the Appellant; K. Gopalakrishna Kurup, for the Respondent

Judgement

M. Ramachandran, J.—Petitioner in this Original Petition claims to be a fish vendor in Nedumkunnam Market. The averments are that he along with 13 persons are conducting the business. For the said purpose petitioner is having 4 lorries with Nos. KL-7/AA-3146, KL-7/X-9014, KL-5/J-9181 and KL-5/G-6636. The petitioner and other vendors used to pay Rs. 40/- as market toll in respect of 40 containers of fish brought to the market. Subsequently, it was attempted to be changed and as per Ext. P2, vendors were to pay Rs. 10/- for every box apart from the vehicle charge of Rs. 15/-. It is contended that such rates were fixed by the Panchayat to help the bidders in the auction and in an attempt to collect funds in an exorbitant manner. Pursuant to Ext. P2 auction notice, the 2nd respondent had been the successful bidder.

2. The implementation of the new system understandably might have adversely affected the fish vendors. Ext. P3 is the petition stated to have been filed by the vendors to the Panchayat. The vendors were thereupon informed by the Panchayat that they have to pay toll to the successful bidder in the prescribed rate. Exts. P2 and P4 are under challenge.

3. Petitioner submits that gate fees for lorry operation is fixed by Ext. P2.

Therefore it was not permissible to suggest and impose toll separately for fish at the rate Rs. 10/- per box. According to the petitioner thereby the business becomes uneconomic. He submits that Rules 7 and 8 of the Kerala Panchayat Public and Private Market Control License Rules are relevant and the maximum rates of fees which can be levied is prescribed and by Ext. P2, this rates stand far exceeded. The schedule also does not authorise to levy toll in respect of boxes of fish. Therefore, as Ext. P2 and consequential proceedings are against rules, they are not enforceable.

4. Standing counsel for the Panchayat objected to the claims raised by the petitioner. He submits that the petitioner is not a fish vendor in the market and Exts. P1 and P3 do not prima facie shows that the petitioner is a fish vendor of the market. Ext. P1 is not seen issued to the petitioner. Petitioner is not a signatory to Ext. P3 representation as well. Petitioner according to him is engaged in the business of wholesale trade in fish and is not confined to the Panchayat. He brings or transports fish to the Nedumkunnam market in lorries and sells the same to retail fish vendors in the market on notified market days. Counsel submits that if the petitioner had any grievance he could have moved the Government who was the statutory appellate authority, competent to rescind decisions of a Panchayat if such decisions were not in consonance with the Act and Rules. It is also submitted that the actual vendors have in fact no complaint about Ext. P2.

5. Of course petitioner appears to be a dealer of fish but his claims of being a vendor in the market is not conclusively proved. But the points urged and highlighted by him as to the competence of the Panchayat to levy toll as is done deserves a better examination. The Panchayat has to clarify whether it is authorised to levy toll in respect of every basket of fish when such levy is not referred to in the Rules. The Panchayat has risen upto the issue and Advocate Mr. Kurup submits that they are prepared to look into the legal issues dispassionately. Simply for generating funds, the tolls are not to be hiked and definitely if not authorised by the statute.

6. Therefore in the circumstances, I direct that if the petitioner or any fish vendor whom he claims to represent makes application highlighting their grievances, that will be properly examined and follow up action is to be taken by the Panchayat. Since the 2nd respondent is also a party to these proceedings, I hold that any change that might follow in this levy of toll consequent to such deliberations and decisions, will be permissible to be implemented and binding on the parties after appropriate adjustments. A decision will be taken as early as possible, and in any case within three months of filing of the representation.

7. The Original Petition is disposed of as above.