(2016) 06 KL CK 0031

In the High Court Of Kerala

Case No : W.P (C) . No. 10992 of 2008 (H)

K.P. Basheer APPELLANT

Vs

The Kottayam Municipality RESPONDENT

Date of Decision : 09-06-2016

Acts Referred:
Kerala Municipality (Writing Off Irrevocable Amounts) Rules, 1999 — Rule 4

Citation : (2016) 3 KLT 356

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : Sri. Surin George Ipe, Advocate, for the Appellant; Sri. Siby Mathew, Sri. Philip J. Vettickattu, Advocates and Sri. Siby Mathew, S.C, for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—The petitioner is concerned with a demand raised at Ext.P6, which, according to him, is against the decision of the Municipality. The brief facts to be noticed are that the petitioner obtained a contract for collection of advertisement tax, as exigiable from the hoardings erected within the Municipality. The total contract amount was Rs. 4,51,786/-.

2. It is the case of the petitioner that due to the unauthorised hoardings being removed, for reason of encroachment into Government property, there was substantial reduction in the income of the petitioner. The petitioner approached the Municipality with a request for waiving deposit of the full amounts agreed as per the contract.

3. The petitioner is said to have made a deposit of 50% at the time of the contract being awarded to him and later the balance 30%. The 20% of the contract amount was reduced as per Ext.P3 resolution of the Municipal Council. Despite that, the petitioner was issued a demand as is seen at Ext.P6, for the balance 20%.

4. The Counter Affidavit of the Municipality indicates that the Municipality had

sent the proposal for waiving 20% of the contract amounts to the Government, which was declined as per Ext.R1(a).

5. Obviously, the approval sought for from the Government was under the Kerala Municipality (Writing Off Irrecoverable Amounts) Rules, 1999. The reliance placed is on Rule 4, which interdicts any amount surcharged under Section 295, from being written off without the prior approval of the Government. Admittedly, the amounts now sought to be waived is not a surcharge amount under Section 295. Under Section 295, the Local Fund Examiner is entitled to initiate surcharge proceedings, which are to be under Kerala Local Fund Audit Act, 1940. Only such amounts surcharged on audit deal would be covered under Section 4.

6. The procedure for write off of amounts is available in Rule 3, wherein the Standing Committee of the Municipality has to take a decision on the writing off of irrecoverable amounts on a recommendation made by the Secretary of the Panchayat, when the amount is within the limit specified in Sub-Rule 3 of Rule 3. For any amounts exceeding the maximum permitted to be waived by the Standing Committee, the Municipal Council is the authority. In the present case, the resolution has been taken by the Municipal Council as per Ext.P3. The resolution is also not writing off of irrecoverable amount. Taking into consideration the hardship and loss caused to the petitioner, the petitioner was given a reduction on the contracted amount.

7. In such circumstance, this Court is of the opinion that the amounts waived by the Council would not come under the Rule 4 of the Rules of 1999. The demand notice at Ext.P6 is set aside. It is declared that the resolution of the Municipality at Ext.P5 shall not be operative.

8. The Rules of 1999 being not applicable, Ext.R1 (a) is of no consequence.

9. The writ petition is allowed. No costs.