(2006) 06 AP CK 0068

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6077 of 2006 and C.C. No. 408 of 2006

Madiwada Ankineedu APPELLANT

Vs

District Collector and Others RESPONDENT

Date of Decision : 09-06-2006

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 104
Contempt of Courts Act, 1971 — Section 10, 11, 12

Citation : (2006) 4 ALD 431 : (2006) 4 ALT 293

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : K. Chidambaram, for the Appellant; G.P., for Panchayat Raj and Rural Development for Respondent Nos. 1 and 2, M. Prabhakara Rao and G. Venkateswara Rao, for the Respondent

Judgement

P.S. Narayana, J.—Heard Sri K. Chidambaram, learned Counsel representing the petitioner, learned Government Pleader for Panchayat Raj, Sri Mokkapati Prabhakara Rao, learned Counsel representing 3rd respondent and Sri Gade Venkateswara Rao, learned Counsel representing 4th respondent.

2. The writ petition is filed praying for issuance of writ of mandamus or any appropriate writ order or direction declaring the action of the respondents 1 to 3 in not conducting public auction for leasing out the collection of Aasil (tax) for weekly shandy of Challapalli Gram Panchayat and granting such right to 4th respondent from the year 2002-03 without conducting public auction as arbitrary, illegal and contrary to rules and pass such other suitable orders.

3. This Court while ordering Rule Nisi on 28-03-2006 made the following order in W.P.M.P. No. 7753 of 2006.

The case of the petitioner is that the Gram Panchayat conducted public auction for leasing out the collection of Aasil (tax) in the weekly shandy for the year 2002 and the 4th respondent has became highest bidder and the lease was granted in his favour which was ended by 31 -3-2003. Thereafter, without conducting the auction the said lease was extended in favour of the 4th respondent by enhancing 5% of the amount for 2004-05. It is stated that every year the lease was renewed in favour of the 4th respondent on enhancement of certain percentage without conducting auction and the said lease was extended upto 31 -3-2006 for an amount of Rs. 2,85,000/-. It is stated that the 3rd respondent is contemplating to lease out the same in favour of the 4th respondent for Rs. 3,00,00/- for the year 2006-07, even though the petitioner has offered Rs. 4,00,000/-. It is stated that the 3rd respondent has taken unreasonable decision to extend the lease in favour of the 4th respondent for the amount of Rs. 3,00,000/-.

Having regard to the facts and circumstances of the case, respondents 2 and 3 are directed not to lease the collection of Aasil for weekly shandy of Challapalli Gram Panchayat for the year 2006-07 in favour of the 4th respondent. Respondents 2 and 3 are further directed to conduct public auction for collection of Aasil for the weekly shandy of the 3rd respondent Gram Panchayat for the year 2006-07 subject to condition that the petitioner deposits the sum of Rs. 1,00,000/- within two days from the date of receipt of a copy of this order before the 3rd respondent and offers the minimum bid as Rs. 4,00,000/-. If such deposit is made, respondents 2 and 3 are directed to conduct auction and whoever offers more than the minimum bid of the petitioner of Rs. 4,00,000/- it shall be given to the highest bidder. If there is no bid amount more than Rs. 4,00,000/-, the lease of the said weekly shandy has to be made in favour of the petitioner treating him as highest bidder.

4. It is stated by Sri K. Chidambaram, learned Counsel representing petitioner that the petitioner had complied with the directions and had sent D.D. for a sum of Rs. 1,00,000/- to the concerned Gram Panchayat and the same is with the Gram Panchayat.

5. The 3rd respondent filed W.V.M.P. No. 678 of 2006 and the 4th respondent filed W.V.M.P. No. 647 of 2006 to vacate the interim order passed in WP.M.P. No. 7753 of 2006, dated 28-03-2006. The petitioner filed C.C. No. 408 of 2006 under Sections 10 - 12 of Contempt of Courts Act complaining deliberate violation of the directions by this Court.

6. Sri K. Chidambaram, learned Counsel representing the writ petitioner would maintain that though the provisions of A.P. Panchayat Raj Act, 1994 (hereinafter in short referred to as "the Act" for the purpose of convenience) do not contemplate the leasing out the collection of Aasil (tax) for weekly shandy by way of public auction alone, the general rule is that the interest of the concerned Gram Panchayat to be protected and hence, such leasing of collection of aasil to get more revenue to the concerned Gram Panchayat normally to be by way of public auction. The learned Counsel also would contend that despite the directions by the higher authorities, for the reasons best known, the Gram Panchayat is not interested in proceeding with the public auction and further the

learned Counsel would maintain that despite the directions issued by this Court and communication thereafter even prior to the expiry of the term, the same was extended in favour of the 4th respondent in the writ petition, which is detrimental to the interests of the Gram Panchayat in question. Learned Counsel also placed strong reliance on the decision of the Division Bench of this Court in " Vaddavalli Fishermen Co-operative Society Ltd. Vs. Rayidi Krishna Kumari and others, :

7. Per contra, Sri Mokkapati Prabhakara Rao, learned Counsel representing the Gram Panchayat in question would maintain that in the peculiar facts and circumstances inasmuch as the Gram Panchayat had decided to extend the lease by virtue of resolution, the writ petitioner has no locus standi at all to question the same. Even otherwise, the learned Counsel would contend that Section 104 of the Act does not contemplate the leasing out of aasil for weekly shandy by public auction and hence, it is within the discretion of the Gram Panchayat to take its own mode and hence, the same cannot be questioned. Even otherwise, the learned Counsel would maintain that inasmuch as there is a resolution of the Gram Panchayat, unless the same is questioned by the writ petitioner by way of availing remedies available under the Act, the writ petitioner is not entitled to the relief prayed for in the present writ petition. The learned Counsel would also contend that inasmuch as even prior to the communication of the order, the lease was extended in favour of the 4th respondent no contempt as such is committed. Even otherwise, these are the affairs of the concerned Gram Panchayat and hence, the writ petitioner has no locus standi to question the same.

8. Sri Gade Venkateswara Rao, learned Counsel representing the 4th respondent in the writ petition would contend that in the light of the peculiar facts and circumstances which had been narrated in detail in the affidavit filed in support of the vacate stay application, the Gram Panchayat thought it fit to extend the lease in favour of 4th respondent and there is no illegality in the said action and hence, the writ petition is liable to be dismissed.

9. Though the matter is coming up for hearing in view of W.V.M.P. No. 647 of 2006 and W.V.M.P. No. 678 of 2006, inasmuch as the counsel on record advanced submissions at length and also in view of the urgency which was brought to the notice of this Court, the writ petition is being finally disposed of by this Court to-day.

10. The 3rd respondent-Gram Panchayat had provided the place for weekly shandy and the same is being held on every Monday in Chellapalle Gram Panchayat, (hereinafter in short referred to as ''Gram Panchayat'' for the purpose of convenience).The Gram Panchayat had conducted public auction for leasing out the collection of aasil (tax) in the weekly shandy in the year 2002 and 4th respondent became highest bidder and Gram Panchayat had granted a lease in his favour in the year 2002 for a period of one year which came to an end by 31-03-2003. It is also stated in the affidavit filed in support of the writ petition

that though the right of the 4th respondent to collect aasil (tax) had expired by 31 -3-2003, the Gram Panchayat had colluded with 4th respondent and thus had been extending the period by enhancing 5% by recommending to the respondents 1 and 2 stating that the highest bidder had incurred loss etc. It is further stated that the Gram Panchayat without conducting public auction extended the said right to collect aasil to the 4th respondent upto 31-03-2003 for an amount of Rs. 2,85,000/-. The petitioner having come to know that the Gram Panchayat is extending the said right of collection of tax in favour of the 4th respondent for the year 2006-07 also without conducting publication, he had approached the Gram Panchayat and 2nd respondent in the 2nd week of March and requested either to conduct public auction or to allot the said right in his favour for the year 2006-07 and offered an amount of Rs. 4,00,000/- for the said period. It is further stated that the respondents 1 and 2 instead of calling either for public auction or accepting his bid for Rs. 4,00,000/-, informed that they were inclined to extend the lease in favour of 4th respondent for the year 2006-07 for an amount of Rs. 3,00,000/- stating that the 4th respondent was getting loss. It was further stated that the news item published in the local newspaper on 18-03-2006 stating that the members of the Gram Panchayat and the officials have been causing loss to the Gram Panchayat without conducting public auction for collection of Aasil-tax from the year 2002 and the same is being given to one person who became highest bidder in the year 2002. It was further published that the said person had been giving Rs. 2,50,000/- every year to the officers from District level to Panchayat level and the Gram Panchayat had convened a special meeting to extend the lease in favour of the existing contractor. It was also further stated that this action taken by the Gram Panchayat is not in the interest of Gram Panchayat and detrimental to the exchequer of the Gram Panchayat in question as well.

11. In the Counter affidavit filed by the 3rd respondent-Gram Panchayat, several facts had not been contraverted. It was stated that for the year 2004-05, the 4th respondent in the writ petition, made a representation to the Gram Panchayat praying for extension of lease in view of the loss incurred by him for the exemption given to Goods Vehicles, the District Collector directed the Gram Panchayat to give remission in the licence fee and accordingly, remission was also given. Keeping in view of the situation, the Gram Panchayat considered the representation of the 4th respondent to grant licence for the year 2004-05 vide its Resolution No. 64 dated 16-03-2005 and requested the Divisional Panchayat Officer for fixation of the upset price. The Divisional Panchayat Officer fixed the upset price of the licence fee at Rs. 2,41,500/- and the licence was granted in favour of the 4th respondent for the year 2004-05. As the 4th respondent is properly paying the licence fee without any disturbances from the vendors of the market, the licence for the year 2005-06 was given on an enhanced licence fee of 5% over and above the existing licence fee of the earlier year as fixed by the Divisional Panchayat Officer. For the year 2006-07, the 4th respondent again made a representation to the Gram Panchayat stating that due to heavy rains

during the year 2005-06, the market was not conducted properly and thus, he incurred loss and requested to renew his licence for the year 2006-07. The matter was placed before the Gram Panchayat and the Gram Panchayat taking into consideration the request of the 4" respondent as genuine and deserves to be considered, passed Resolution No. 16 accepting the request of the 4th respondent and forwarded the same to the Divisional Panchayat Officer for fixation of the upset price. The Divisional Panchayat Officer, taking into consideration of the facts, fixed the upset price as Rs. 2,82,450/- which was arrived at by average licence fee of the earlier three years. Accordingly, the licence was granted in favour of the 4th respondent and he had deposited the initial deposit amount and had been collecting the market fee. Several other allegations also were made in favour of 4th respondent at para 3 of the counter-affidavit. The 4th respondent had taken a specific stand that he supplied vegetables for the flood-affected shelters on free of cost by purchasing the same for Rs. 5000/-. Though he made an application for remission, the authorities did not grant the same. It was also stated that even though there was no business during the last two months, he had been paying monthly instalments regularly. He had taken specific stand that under the facts and circumstances which he had explained, the Gram Panchayat thought it fit to consider his request and passed a resolution and hence, inasmuch as due to heavy loss and basing on prompt payments the Gram Panchayat had passed resolution in his favour and inasmuch as there is no collusion between the Gram Panchayat and the 4th respondent. The action of the Gram Panchayat is in accordance with the Law and hence, the writ petition may be dismissed.

12. Section 104 of the Act dealing with the Public Markets reads as hereunder.

Public markets:

(1) The gram panchayat may provide places for use as public markets and with the sanction of the Commissioner close any such market or part thereof.

(2) Subject to such rules as may be prescribed the gram panchayat may levy one or more of the following fees in any public market at such rates, not exceeding the maximum rates, if any prescribed in this behalf, as the gram panchayat may think fit-

a. fees for the use of, or for the right to expose goods for sale in, such market;

b. fees for the use of shops, stalls, pens or stands in such markets;

c. fees on vehicles including motor vehicles as defined in the Motor Vehicles Act, 1988 or pack-animals bringing or persons carrying, any goods for sale in such markets;

d. fees on animals brought for sale into or sold in such markets;

e. licence fees on brokers, commission agents, weighmen and measures practicing their calling in such market.

13. It is no doubt true that the provision does not specifically specify the mode under which the lease relating to the collection of aasil-tax in relation to the weekly shandy etc., to be granted. In a slightly different contrast, a Division Bench of this Court in "Vaddavalli Fishermen Co-operative Society Ltd''s case (1 supra), at para 19 observed as under.

Before parting with the judgment, it is to be noticed that the tank in question being a public property is being given on lease not by conducting any public auction but by fixing the lease amounts by the Departments themselves. It is well established by the catena of judgments of the Hon''ble Supreme Court that leasehold rights of any public largesse shall be conducted in an open public auction in accordance with the law and the rules provided therefore and an attempt should be made to get the maximum revenue for the Government. In the instant case, while the Fisheries Department has fixed the amount at Rs. 22,000/- in favour of 15th respondent the Gram Panchayat granted the leasehold rights in favour of 6th respondent for Rs. 15,000/-. Further, the two societies claiming to have been working for the benefit of the fishermen community are claiming the benefits provided by the government in the matter of grant of fishery leasehold rights in the tank. Even if the property is to be given on lease to any of the societies, it should not be given at the expense of the public exchequer. Therefore, it is better the leasehold rights in respect of the tank in question are auctioned in an open public auction. We have no manner of doubt that the government will look into the matter afresh and grant lease in accordance with the rules in an open auction and respondents 5 and 6 and others be given the liberty to participate in the same.

14. It may be true that the aforesaid decision may not be directly applicable to the facts of the present case, inasmuch as this being one arising in relation to the exercise of powers u/s 104 of the Act. Be that as it may, it is need less to say that the fundamental principles of good governance and good administration inclusive of the local bodies, these little democracies-gram panchayats are of paramount importance as a part of the same, it is always bounden duty of the Gram Panchayat and also concerned authorities to see that the interest of the Gram Panchayats especially in relation to the improvement of exchequer of the Gram Panchayat to be maintained with care and caution. The other considerations are only of secondary importance. These fundamental considerations cannot be lost sight of since these are expected to be followed despite the fact that a statutory provision may be silent relating to the mode to be adopted in certain cases. Be that as it may, taking into consideration the aspects involved this Court is of the considered opinion that this is high time that the State Government may have to look into the necessity of bringing in a suitable amendment, if need be by way of clarification in this regard. This Court is not inclined to express any further opinion in relation thereto.

15. Coming to the facts of the case, here is a case where the 4th respondent is continuing as such on some pretext or the other for sufficiently a long time. For

the reasons best known, public auction is not being conducted. It is also needless to say that this Court made an interim order on 28-03-2006. In the considered opinion of this Court, the interim order made by this Court referred to supra, is a just and an equitable order in the facts and circumstances of the present case. It is stated by the learned Counsel for the writ petitioner that the demand draft for Rs. 1,00,000/- as directed by this Court had been sent and the same is in the custody of the Gram panchayat. Be that as it may inasmuch as conducting of public auction being the normal rule and extension of lease or renewal of lease or by private negotiations, being always exceptions, the normal rule of conducting auctions by way of public auction alone to be followed, unless specific, clear and special reasons are recorded in this regard. It may not be a whimciful or fanciful exercise of the discretion on the part of the Gram Panchayat. The concerned Officers in the higher-ups are expected to be careful and cautious, especially in the light of the different provisions of the Act referred to supra. Certain submissions were made that unless the resolution of the Gram Panchayat is annulled, the writ petitioner is not entitled to any relief whatsoever. It is pertinent to note that here is a matter, where the writ petitioner is complaining that for sufficiently a long time the 4th respondent is being continued by the Gram Panchayat for certain extraneous reasons. This Court need not go into those details. But however, inasmuch as the same being detrimental to the exchequer of the Gram Panchayat, this Court is of the considered opinion that the writ petition can be disposed of with the following directions.

16. The Gram Panchayat-3rd respondent herein is hereby directed to fix the minimum bid amount at Rs. 4,00,000/- and advertise the same and further proceed with the public auction relating to the collection of aasil-tax of the weekly shandy of Challapalle Gram Panchayat, within a period of four weeks from today. It is needless to say that the writ petitioner, 4th respondent and other bidders interested in participating the public auction are at liberty to do so. The demand draft for Rs. 1,00,000/- deposited by the writ petitioner, either to be adjusted or be returned to the writ petitioner, depending upon the facts and circumstances. This order is being made in the interest of this little democracy-gram Panchayat in question.

17. The writ petition is accordingly disposed of, No order as to costs.

18. In view of the fact that there is some factual controversy, this Court is not inclined to entertain the Contempt case and accordingly, the Contempt case is hereby