

(2009) 08 KL CK 0105

In the High Court Of Kerala

Case No : Writ Petition (C) No. 17144 of 2009

Malabar Organics Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 16, 2, 34, 5, 7
Kerala Revenue Recovery Rules, 1968 — Rule 4, 5, 5(1), 5(3)

Citation : (2009) 4 KLT 328

Hon'ble Judges : Kurian Joseph, J;C.T. Ravikumar, J

Bench : Division Bench

Advocate : Ranjith Thampan, A.A.G, M.R. Sabu, Government Pleader, K.P. Satheesan, K.K. Gopinathan Nair, M.R. Jayaprasad, P. Mohandas Ekm., C.V. Rajalekshmi, K.K. Rajeev, T.K. Kamaljith, P. Gopinatha Menon, George Abraham, Wilson Urmese, M. Tripten, H. Hamza Rawther, V.K. Peer Mohamed Khan, Raja Vijayaraghavan, R. Renjith, B.H. Mansoor and George Poonthottam, for the Appellant; V.M. Kurien, Mathew B. Kuriaji, K.T. Thomas, M.M. Syed Muhamed, C.A. Joy, Public Prosecutor Thajudeen, C.K. Karunakaran and K. Jaju Babu, for the Respondent

Judgement

Kurian Joseph, J.—Whether, the Government is entitled to realize collection charges in connection with the recovery of dues, under the provisions of the Kerala Revenue Recovery Act is the issue raised in all these cases. The learned Single Judge in the judgment under appeals held that, there is no liability to pay collection charges in cases where amounts have been directly remitted by the parties before the requisitioning authority. Some of the Writ Petitions still pending before the single bench have been tagged along with Writ Appeals. W.P.C. No. 23991/05 is referred to the Division Bench in view of divergent views taken by this Court on the liability to pay collection charges.

2. Heard the learned Additional Advocate General appearing for the State and the learned Counsel appearing for the parties. The main contention for the State is that in view of the proviso to Section 71 read with the power reserved to the

Government to make rules for the purpose of implementing the provisions of the Act, and in view of the huge expenses incurred for the recovery, the levy is justified. The Counsel for the parties, and writ petitioners submit that u/s 2(d) read with Sections 5 and 16 of the Act, there is no justification in or authority for the recovery officer to realize collection charges. It is contended that the Government being the rule making authority, so long as there is no express power conferred on the Government to levy collection charges in the plenary provisions of the parent Act, the rule making authority cannot levy such charges. What is permitted under the Act is only the recovery of the cost of process and other charges incurred for the recovery and nothing else. It is also contended inter alia that what is permissible is only, even assuming the rule is upheld, collection charges and not service charges as recently introduced under Rule 5(3).

3. In order to appreciate the rival contentions, it is necessary to refer to the scheme of the Act and the rules. The Kerala Revenue Recovery Act, 1968 was enacted to consolidate and amend the laws relating to the recovery of arrears of public revenue in the State of Kerala. u/s 71, appearing in Chap. IV, the Government has been vested with power to declare the Act as applicable to any institution. In the amendment introduced with effect from 27.2.1980, it is stated that the Act is also intended for the realization of collection charges from all the institutions and autonomous bodies on whose behalf recoveries are made by the Government. Section 2(a) defines arrear of public revenue due on land which reads as follows:

2(a) "arrear of public revenue due on land" means the whole or any portion of any Kist or instalment of such revenue not paid on the day on which it falls due according to the kistbandy or any engagement or usage.

Section 2(d) provides for cost of process. It is an inclusive definition. The provision reads as follows:

2(d) "cost of process" includes:

- (i) the batta paid u/s 76;
- (ii) the expenses incurred in connection with the attachment of any property and the removal, storing and guarding of any property attached; and
- (iii) the cost of publication of sale;

Section 2(i) deals with the mode of recovery prescribed under the rules. Section 2(j) provides for public revenue due on land which reads as follows:

2(j) "public revenue due on land" means the land revenue charge on the land and includes all other taxes, fees and cesses on land, whether charged on land or not and all cesses or other dues payable to the Government on account of water used for purposes of irrigation.

Section 5 deals with recovery of arrears of public revenue due on land which reads as follows:

5. Arrears of public revenue due on land how recovered.-- Whenever public revenue due on land is in arrear, such arrear, together with interest, if any, and cost of process may be recovered by one or more of the following modes:

- (a) by attachment and sale of the defaulter's movable property;
- (b) by attachment and sale of the defaulter's immovable property;
- (c) by appointing an agent for the management of the defaulter's immovable property;
- (d) by arrest of the defaulter and his detention in prison.

It can be seen from the above provisions that the arrears of public revenue is to be recovered along with interest and cost of process by taking recourse to four methods:

1. The attachment and sale of defaulter's movable property.
2. By attachment and sale of the defaulter's immovable property.
3. By appointing an agent for the management of the defaulter's immovable property.
4. By arrest of the defaulter and his detention in prison.

Chapters 2 and 3 deal with the procedure for attachment and sale of the property of the defaulter. Elaborate procedure has been prescribed under those two chapters. A proviso has been introduced u/s 71 by Act 31 of 2007 effective from 27.2.1980, making the institutions or autonomous bodies liable to pay the collection charges for the recovery of the amounts as prescribed by the Government. Section 76 provides that persons employed in serving notices or other process under the Act shall be entitled to batta as fixed by the Government. Section 77 provides that the interest and cost of process incurred in the process of recovery shall be recoverable from the defaulter and the surety. u/s 86, the Government is bestowed with power to make rules to carry out all or any of the purposes of this Act. The Kerala Revenue Recovery Rules, 1968 were thus framed under the authority of Section 86. Rule 4 provides for batta and other charges. A table is also provided for the charges. The rule and the table read as follows:

Rule 4: Batta and other charges at the rates specified in Column (2) of the Table below, shall be levied in respect of the Item specified against them in column (1) of the said Table. These charges shall be recovered from the defaulters along with the arrears due.

TABLE -----	
(1) (2) Item Rate	(i) Demand notice fee (either under Rs. p Section 7 or u/s 34). (Rs. 2 per demand notice) (ii) Fee for the distraint and sale 1.00 (per case) of movables (iii) Fee for the attachment and sale of immovable to meet the cost of 1.00 do. labour (iv) Tom torn charges 1.00 do. (v) Publication charges Actual

expenses incurred. (vi) Transport charges or other At the rates prescribed in the charges Financial Code. (vii) For arrest and detention in Subsistence allowance at such civil jail rates as may be specified by the State Govt. for judgment debtors u/s 57 of the Code of Civil Procedure, 1908. (viii) Collection charges (5% of the arrears to be collected, when the arrears does not exceed Rupees Five Lakhs and 7.5% of the arrears to be collected, when the arrears exceed rupees Five Lakhs).

Rule 5 deals with the collection charges. The Rule reads as follows:

5(1). Collection charges at the rate of 5 percent of the arrears to be collected under the provisions of the Act on behalf of any institution notified u/s 71 or collected on behalf of any institution u/s 68 (when the arrears does not exceed Rupees Five Lakhs and at the rate of 7.5 % when the arrears exceed Rupees Five Lakhs) shall be realised from the defaulters and accounted as arrears to such institutions.

(2) The collection charges shall be deducted from the amount recovered and the balance alone shall be payable to the institution.

Under Rule 5(3), it is stipulated that the institutions on whose behalf recovery is made, shall be liable to pay 1% amount in case institutions collect the amounts after the initiation of the revenue recovery proceedings. We have made it clear in several judgments (W.P.C. No. 22509/08 and other connected cases) that there is no liability to pay collection or service charges in case the defaulters pay the arrears directly to the institution pursuant only to a notice u/s 7 or 34. In other words, the liability to pay such charges arises only in cases where further steps towards attachment or sale are taken. Therefore, it is made clear that in the cases before us, our consideration is in respect of cases where in the process of recovery, some steps other than mere notice u/s 7 or 34 have been taken.

4. There are two main issues to be considered on the questions mooted before us. The first main question is on the vires of Rule 5. It is a settled position that the rule making authority being a delegate under the Statute, such delegate cannot travel beyond the scope of the specific authority conferred on it. In other words, unless the Government is bestowed with power under the Act to make rules to realize collection charges or service charges, it cannot levy such charges by making provision under the rules, being a subordinate legislation. At the outset, we may deal with one issue regarding the two different expressions "collection charges" and "service charges". Going by the scheme of the Act at the first blush it would appear that the cost of process given in detail under the table below Rule 4, along with interest alone is leviable in the process of revenue recovery. But, it has to be seen that Section 2(d) while defining cost of process provides for an inclusive definition, only indicating thereby that the cost in the process of recovery would take any other expense or charges incurred for the recovery. Though under proviso to Section 71, what is stated is only collection

charges as far as institutions are concerned, except for the difference in the terminology, for all purposes and effects it is one and the same. Government machinery is used in the process of coercive steps taken for recovery. The institutions notified u/s 71 do not have to undergo the long drawn litigative process by incurring heavy expenditure. On a requisition made to the District Collector, the recovery machinery is set in motion and by various coercive steps the money is recovered from the defaulter. As a matter of fact, many of the institutions have attractive offers to the defaulters for settlement and by making use of such opportunities, the defaulters directly pay the amounts to the institutions. But, the fact remains that the Government has incurred heavy expenditure apart from the cost as provided under the table in using its machinery and making available the service of the officers. At no extra cost the institutions get their dues. It is, in that view of the matter only, the amendment was introduced by Act 31 of 2007 with effect from 27.2.1980 wherein, it has been explicitly . made clear that such institutions who collect the amounts directly from the defaulters after the coercive steps for the revenue recovery shall be liable to pay 1% of the amounts so collected towards service charge on account of the recovery proceedings. The expression "service charge" under Rule 5 is nothing but the collection charges as provided under the proviso to Section 71.

5. The tabled Item (viii) under Rule 4 and Rules 5(1) have been challenged as ultra vires the Act. What is provided u/s 5 is only cost of process. But, as already noted by us, the cost would include other charges also. Such a view is also possible in terms of the wide power given to the Government u/s 86 to make rules to carry out all or any of the purposes of the Act. One of the purposes of the Act is to realize the collection charges from the defaulters. If so, the question is only whether the provision is unreasonable and discriminatory. When the defaulters remit the dues directly to the institutions on exhausting all the steps taken by the revenue recovery authorities, all that the institutions have to bear is only 1% of the amount collected from the defaulters. If that be so, the levy of 5% is certainly unreasonable when the amount is collected in the process of recovery by the revenue recovery authorities. After all such proceedings are initiated only in situations of distress. As observed by learned Single Judge of this Court in Bhaskaran K. Vs. The Sub Registrar and Others, "Making the poor, poorer is not what is intended by the Revenue Recovery Act and the Rules thereunder". Even otherwise, cost of involvement of the Government machinery cannot depend on the amounts collected in the process of coercive steps taken under the Revenue Recovery Act. Whether it is ten thousand rupees or ten crores of rupees, the process is the same. Therefore the levy of collection charges for utilizing the Government machinery, apart from the interest and cost as permitted under Rule 4, proportionate to the amount collected is nothing but an extortion and thus unreasonable and not permitted or warranted under the Statute or the Constitution. The process of revenue recovery cannot be used as a source of revenue for the State. That is plainly beyond the legislative

competence under the Constitution of India. Therefore, we hold that Item (viii) under Rule 4 and Rule 5(1) are unreasonable and discriminatory and ultra vires the parent Act and the Constitution of India. The duty of the court normally is to leave the matter at that stage. But, that would certainly be against public interest. The court has also the duty in such circumstances to construct, if situation so warrants. This is a case warranting the exercise of such a duty. Since we have already held that collection of 1% towards collection charges from institutions is permissible, we hold that in the process of recovery under the provisions of the Revenue Recovery Act by taking recourse to coercive steps, only 1% of the amount in addition to the cost of process and other charges as permitted under Rule 4, is permissible as collection charges.

6. As far as K.F.C and K.S.F.E are concerned, it is brought to our notice that those institutions have their own machinery of recovery, by utilizing the service of officers on deputation from the Government. It is submitted that the entire expenses including salary and maintenance of the establishment are met by the Corporation and the Enterprises. If that be so, there is no justification in realizing the service charges from K.F.C or K.S.F.E in terms of Rule 5(3). What is permissible is only recovery of the expenses provided under Items (i) to (viii) in the table under Rule 4.

7. In view of what we have held above, there would be a direction to the appellants, the Government, the Corporations and institutions to examine each case on facts and do the needful in the matter of levy of the collection charges/ service charges and for returning the documents and refund of excess amounts if any collected in the light of this judgment. The needful as above shall be done within two months from the date of production of a copy of this judgment.