

(1997) 01 AP CK 0048

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9033 of 1997

Mandela Nagasurya Ranga Rao

APPELLANT

Vs

The Excise Superintendent and Others

RESPONDENT

Date of Decision : 22-01-1997

Acts Referred:

Andhra Pradesh Excise (Lease of Right to sell Arrack in Retail) Rules, 1988 — Rule 22, 22(2)

Andhra Pradesh Revenue Recovery Act, 1864 — Section 52

Citation : (1997) 2 ALD 352 : (1997) 2 ALT 748 : (1997) 1 APLJ 257

Hon'ble Judges : Krishna Saran Shrivastav, J

Bench : Single Bench

Advocate : D. Sudarsana Reddy, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Krishna Saran Shrivastav, J.—In this Writ Petition under Article 226 of the Constitution of India the petitioner assails the attachment order dated 29-05-1989 issued by the third respondent for the recovery of Rs. 6,37,902-60 being the excise arrears for the year 1988-89 on the ground that recovery is illegal and arbitrary.

2. The facts of the case, in brief, are that the petitioner was the successful bidder for Achugatlapalem, Pedapeta and Penumadam road arrack shops in the auction held in the year 1988. The petitioner also deposited the necessary amounts after acceptance of his bid as per the A.P. Excise (Lease of Right to sell Arrack in Retail) Rules, 1988. Therefore, licences were issued to him for carrying on the business by paying the privilege fees and issue prices etc. The petitioner has also given an undertaking in Form-IV counterpart agreement at the time of obtaining licences wherein it has been mentioned that the licensing authority shall redispense the shops in case the petitioner fails to pay in time the privilege fee, issue fee of arrack or other dues in the manner as specified in arrack rules. The

allegation that when the petitioner did not pay the monthly privilege fee of the shops in question in two equal instalments even after service of a show-cause notice, the licence was cancelled under Rule 20 of the A.P. Excise Rules. Thereafter, the arrack shops were taken back from the petitioner and they were resold on 2-4-1989 by auction. The Respondent Nos. 2 and 3 calculated the resultant loss at Rs. 6,37,902-60 as per the Rule 22(3) of the Arrack Rules and the Collector of Excise, West Godavari, Eluru, wrote to the concerned Mandal Revenue Officer to recover the said loss and the Mandal Revenue Officer, Palakol, attached the property of the petitioner.

3. The petitioner alleges that the auction held on 02-04-1989 was not in accordance with the Rules, because no proper publicity was given and low bids were accepted and therefore, he is not liable for the resultant loss. The respondent did not issue any notice before determining the alleged resultant loss to be recovered from him and therefore the attachment order is illegal and arbitrary, particularly because the Excise Authorities have not given any particulars in arriving the figure of Rs. 6,37,902-60 towards excise arrears.

4. The Respondents through the counter have denied the claim of the petitioner. They have alleged that the petitioner had deliberately not paid the privilege fees for the months of December, 1988 and January, 1989 in spite of the demand and show-cause notice and therefore, the three shop"s were auctioned after wide publicity and the bids of the highest bidders were accepted. The resultant loss, rightly calculated at Rs. 6,37,902-60, has to be recovered by the concerned Mandal Revenue Officer. The properties of the petitioner were attached strictly in accordance with Section 65 of A.P. Excise Act, 1968 and as such, the petitioner cannot question the action of the concerned Mandal Revenue Officer, Palakol, in attaching the property. The petitioner was well aware that the quantification had been done while taking into consideration the annual issue price and the privilege fee thereon after deducting the amounts in deposit and the amounts fetched in the re-auction, and it is open for him to show as to how the quantification was incorrect, and under these circumstances, the Writ Petition deserves to be dismissed.

5. Rule 20(2) of the Excise Rules provides that in case of default of the first or second instalment of the monthly privilege fee/the licence shall be liable to be suspended or cancelled after giving an opportunity to the holder thereof on making his representation within seven days against the action proposed. There is the specific allegation in the counter that the show-cause notice was issued to the petitioner before cancelling his licence on the ground that he has committed default in making both the instalments of privilege fee for the months of December, 1988 and January, 1989. This allegation, has not been denied either in the affidavit of the petitioner or by filing a reply affidavit. There is no material on record to hold that the cancellation of the licence was not valid. The disputed question of fact is whether wide publicity was given as per Rule 8 of the Arrack Rules at the time of re-auction of the shops in question. The disputed question of

fact cannot be decided in summary proceedings under Article 226 of the Constitution of India. Even otherwise, there is no material on record from which it can be gathered that re-auction was not done as per the prescribed rules.

6. Rule 22(2) of the Arrack Rules provides that where a licence is cancelled under the provisions of the Act or Rules made thereunder, the right to sale shall be redispensed subject to the same conditions and liabilities laid down in these rules. Any resultant loss on account of the taking management under the Collector or re-disposal of the lease shall be recovered from the deposits of the defaulting licensee and the balance of dues if any after such adjustment shall be recovered from the properties of the defaulting licensee under the provisions of the Andhra Pradesh Revenue Recovery Act, 1864. (Act No. 11 of 1864)

7. Thus, it is seen that under Sub-Rule 2 of Rule-22 of the Arrack Rules, the resultant loss on account of taking management under the Collector or re-disposal of the lease is to be recovered from the deposits of the defaulting licensee under the provisions of the Revenue Recovery Act.

8. Section 52 of the Revenue Recovery Act reads as under :

"All arrears of revenue other than land-revenue due to the State Government, all advances made by the State Government, for cultivation or other purposes connected with the revenue, and all fees or other dues payable by any person to or on behalf of the village servants employed in revenue or police duties, and all cesses lawfully imposed upon land and all sums due to the State Government, including compensation for any loss or damage sustained by them in consequence of a breach of contract, may be recovered in the same manner as arrears of land revenue under the provisions of this Act unless the recovery thereof shall have been or may hereafter be otherwise specially provided for."

9. In the case of Govmdu Rama Rao v. The Revenue Divisional Officer, Srikakulam and Ors., 1975 (2) An.W.R. 426. it was held that :

"The amount of arrears, which is now sought to be recovered comes under the category of "all sums due to the State Government," which is one of the categories of amounts that can be recovered under the Revenue Recovery Act. The sum due to the Government is an amount ascertained by the appropriate authority of the Government, or by a Court as the case may be. The expression "due" necessarily implies a legal liability. Before a legal liability is fastened to any particular individual, he must be given due opportunity to meet the case of the Government that a particular amount was owed by him to the Government. Otherwise, one sided or arbitrary determination of the amount cannot lead to the conclusion that there is a legal liability fastened to the particular person. It is only when due opportunity is given to him and the amount is determined after giving that opportunity to the person concerned, the amount is said to be due to the State Government. Does it also mean that the ascertainment would not be complete with the determination of the sum by the authority concerned after giving due notice and opportunity to the person concerned? It is further

necessary or can it be said that it will not become an amount due or sum due until the highest Appellate Authority completes consideration of the matter? The later contention cannot stand the test of scrutiny, because on making practical approach, it cannot be said that in every case there will be an appeal to the highest authority. If there is no appeal, the sum determined by the appropriate authority becomes final. Once that authority fixes the amount after due ascertainment, he cannot go on awaiting the sweet pleasure of the person concerned to go in appeal. Apart from the fact that Section 52 does not give any room for such a construction, if the contention taken on behalf of the petitioner is incorporated into Section 52, the very purpose of Section 52 will be defeated and the intention of the Legislature will be violated. The recovery proceedings postulated by the Revenue Recovery Act are summary in nature and were not intended by the Legislature to be a prolonged affair. Once an officer or authority who is empowered to determine the amount fixes it, after giving adequate opportunity to the person concerned it becomes due to the State Government."

10. The position of law as emerges from the principle laid down in Govindu Rama Rao's case (1 supra) is that the Officer or authority who is empowered to determine the amount should fix all sums due to the State Government after giving adequate opportunity to the person concerned and when it is done, the sum becomes due to the State Government (and it) has to be recovered as arrears of land revenue u/s 52 of the Revenue Recovery Act.

11. The petitioner has specifically pleaded in para 5 of the petition that the respondent had not issued any notice before determining the alleged amount due to them. The Excise Authorities did not give any particulars in arriving at the said figure. Therefore, it cannot be said that he owes an amount of Rs. 6,37,902-60 to the Excise Authorities. It is pertinent to note that in the corresponding para of the counter or in any other para of the counter, the respondents have not alleged that before arriving at the resultant loss of Rs. 6,37,902-60, notice was given to the petitioner or he was heard in defence. Because no opportunity was given to the petitioner before fixation of the resultant loss under Rule 22 of the Arrack Rules, the recovery appears to be bad as it cannot be said that this was a sum due to the State Government. It is true that there is no specific provision in Rule 22(2) of the Arrack Rules to give an opportunity to the defaulter before the resultant loss is assessed. But, in order to get the resultant loss recovered as arrears of land revenue which become due to the State Government, it appears necessary u/s 52 of the Revenue Recovery Act to give an opportunity to the concerned person for being heard before he is fastened with the legal liability.

12. For the foregoing reasons, the revenue recovery proceedings pending with the Mandal Revenue Officer, Palakole, are quashed and I direct the concerned Excise Authorities to give a reasonable opportunity to the petitioner to be heard for determination of the resultant loss and thereafter, to ascertain the resultant loss and proceed according to law.

13. The Writ Petition is accordingly allowed. No. costs.