
(1989) 10 KL CK 0041
In the High Court Of Kerala
Case No : O.P. No. 2073 of 1986

M.K. Abdu

APPELLANT

Vs

Kerala State Financial Corporation Ltd. and Others

RESPONDENT

Date of Decision : 24-10-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Revenue Recovery Act, 1968 — Section 71

Citation : (1993) 76 CompCas 271

Hon'ble Judges : D.J. Jagannadha Raju, J

Bench : Single Bench

Advocate : N.N. Sugunapalan, for the Appellant; Radhakrishnan and Government Pleader for respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

D.J. Jagannadha Raju, J.—This petition is filed challenging exhibits P-3 and P-4 notices issued by respondents Nos. 2 and 3 under the provisions of the Kerala Revenue Recovery Act. The facts leading to the filing of this original petition are as follows :

The petitioner is the managing partner of the Chemmale Starch Factory, a firm constituted under the Indian Partnership Act. The firm secured a loan of Rs. 1,47,800 from the Kerala State Financial Corporation in 1975. Exhibit P-1 order sanctioning the loan was passed on December 9, 1974. Exhibit P-2 deed of indenture was executed in the year 1975, and in accordance with the terms of exhibits P-1 and P-2 monies were being advanced by the Corporation. It is the allegation of the petitioner that the Corporation committed breach of the terms of the deed of indenture and that the company was put to loss by reason of the Corporation not advancing monies as originally promised. Ultimately, when the petitioner could not pay the half-yearly instalments, a demand notice was issued to the petitioner in July, 1984, seeking to recover the amount under the provisions of the Kerala Revenue Recovery Act. The second respondent issued

exhibit P-3 demand notice. Representation was made to the second-respondent to verify the correctness of the accounts and the amount that is legitimately due. Though the second respondent promised that he would verify the accounts and inform the petitioner, a second notice, exhibit P-4, was issued in July, 1985, under the Revenue Recovery Act informing the petitioner and his brother to pay the amount of Rs. 2,57,000 immediately. Then this writ petition has been filed for the grant of a writ of certiorari to quash exhibits P-3 and P-4 notices.

2. In this original petition, the main attack of the petitioner's counsel, Shri N.N. Sugunapalan, is as follows : There is no statutory provision empowering the Kerala Financial Corporation to resort to the provisions of the Kerala Revenue Recovery Act and the provisions of the State Financial Corporations Act, 1951, a Central enactment, cannot be amended or altered by any State legislation. The State cannot extend the provisions of the Kerala Revenue Recovery Act for recovering monies due for transactions under exhibits P-1 and P-2. The State Financial Corporations Act, 1951 (hereinafter called "the Corporations Act" for the sake of brevity), provides for taking action u/s 29, namely, to take over the management or possession or both of the industrial concern and it also provides for taking action in conformity with Section 31 by moving an application before the District Judge. It is not open to the Financial Corporation to invoke the aid of the Revenue Recovery Act. It is further contended that Section 32G which was introduced into the statute book by Act 43 of 1985 cannot be invoked by the Corporation in the present case, because it is a substantial law amendment which came into existence long after the transaction was concluded and the agreement, exhibit P-2, was executed. Section 32G is only prospective in operation and it has no retrospective operation. The rights of the Parties are governed by the law as prevailing on the date of the agreement. It is also contended that if for any reason the court comes to the conclusion that Section 32G can be invoked, then the formalities and procedure prescribed u/s 32G should be complied with and in the present case it has not been done. Hence the action of the Corporation is bad in law. Learned counsel further contends that notification, exhibit P-5 dated July 6, 1979, namely, S.R.O. 851/79 issued u/s 71 of the Revenue Recovery Act cannot be invoked for collecting arrears due from the petitioner. The notification is subsequent to the transaction, and hence the State is not entitled to take action under the Revenue Recovery Act, taking advantage of exhibit P-5 notification.

3. On behalf of the Financial Corporation, Shri Radhakrishnan, contended that in this particular case a writ petition under Article 226 of the Constitution does not lie. The jural relationship between the parties is based on a contract and hence the remedy is by way of a civil suit. He relies upon the decision in David v. Kerala State Financial Corporation [1988] 1 KLT 585, in support of his argument. He further contends that in this particular case, neither the State nor the Corporation relies upon Section 32G, and hence there is no need for this court to decide whether Section 32G has retrospective operation or only prospective operation. The matter can be decided de hors Section 32G. He points out that

even without resorting to Section 32G there is ample statutory power for the State to proceed to recover the amount due to the Corporation by applying the provisions of the Kerala Revenue Recovery Act. Shri Radhakrishnan further points out that the main grievance of the petitioner is against exhibits P-3 and P-4 only. He has not chosen to challenge the validity of Section 71 of the Revenue Recovery Act or the notification, exhibit P-5, issued u/s 71 of the Act. The validity of the notification as well as Section 71 has been upheld by this court in several decisions. Exhibit P-3 is the demand notice dated July 4, 1984. His main grievance is against exhibit P-3, exhibit P-4 is only a step in the follow up action. When exhibit P-4 was served on the petitioner in July, 1985, he came forward with this writ petition on March 21, 1986. The petitioner kept quiet from July 4, 1984, to March 21, 1986, and even if we assume that exhibit P-4 is the starting point for the cause of action for filing this writ petition, the writ petition filed on March 21, 1986, is delayed by more than eight months and hence it should be rejected as belated.

4. I shall now consider the rival arguments of the two advocates. It may be pointed out that previously in various High Courts the validity of Sections 29 and 31 was challenged. In this court in *Surendranathan v. Kerala Financial Corporation* [1988] 2 KLT 186 : [1991] 70 Comp Cas 801, this question was considered and the Division Bench observed at page 189, in paragraph 9, as follows (at page 807 of 70 Comp Cas) :

"The Act, therefore, intended that the Corporation should have "special privileges" for enforcement of its claims. This object was sought to be achieved by the provision contained in Section 31 and Section 29 and now by Section 32G also. Section 29 is an enabling provision under which the Corporation can in certain circumstances, if the situation warrants, take possession of the secured premises in the interests of the industry, in the interests of the Corporation, in case of default. In the absence of Section 29, the board would have been powerless to take possession even in those cases where there is default, and no attempt is made by the defaulter to pay the dues and the factory is allowed to remain idle . . . Section 29 is thus not meant for arbitrary use and is not capable of arbitrary exercise. The guidelines for the exercise of this power are thus found in the object and purpose of the Act and in the various provisions including Section .24 of the Act. Section 29 is thus not arbitrary or is violative of Article 14 of the Constitution."

5. Then the Division Bench quoted with approval the decision in *Srinivasa Kandasari Sugars, Narasimhunipet Vs. Government of Andhra Pradesh and Others*, , and observed that Section 29 is not violative of Article 14 of the Constitution and it was perfectly valid.

6. Dealing with Section 31 of the Corporations Act the Bench quoted with approval the decision of the Karnataka High Court in *Shreeshyla Crowns and Screws Pvt. Ltd. v. Union of India* AIR 1983 Kar 130, and the decision of this court in *Molly Jose v. Kerala Financial Corporation* [1984] KLT 655, and observed

in paragraph 12 as follows (at page 810 of 70 Comp Cas) :

"Section 31 was upheld by this court in Molly Jose v. Kerala Financial Corporation [1984] KLT 655, though for different reasons. We are in respectful agreement with the reasoning of the Andhra Pradesh and Karnataka High Courts."

7. Then this court observed in paragraph 14 as follows (at page 810 of 70 Comp Cas) :

" We, therefore, hold that Section 29 of the State Financial Corporations Act is not arbitrary or violative of Article 14 of the Constitution ..."

8. In David v. Kerala State Financial Corporation [1988] 1 KLT 585, a Division Bench of this court had occasion to consider the validity of Section 71 of the Kerala Revenue Recovery Act and the validity of Notification No. S.R.O. 851/79, and also the question whether a writ petition would lie in a matter of this nature. The Bench observed at page 588 as follows :

"The jural relationship between the petitioners and the Corporation is purely contractual. For breach of any conditions in the said contract, or for enforcing the rights thereunder, or for getting redressal against recovery of amounts pertaining to such contract, the remedy of the petitioners should be, by filing a suit in the ordinary civil court. It is not open to the petitioners to invoke the extraordinary jurisdiction vested in this court under Article 226 of the Constitution of India."

9. In coming to this conclusion the court placed reliance upon Radhakrishna Agarwal and Others Vs. State of Bihar and Others, and Life Insurance Corporation of India Vs. Escorts Ltd. and Others, . Then dealing with the question of validity of Section 71 of the Kerala Revenue Recovery Act and Notification No. S.R.O. 851/79, issued u/s 71, from paragraph 5 onwards, the court observed (at page 590) as follows :

"We have no hesitation to hold that Section 71 of the Kerala Revenue Recovery Act will fall within entry 30, List II of the Seventh Schedule to the Constitution of India, Section 71 of the Kerala Revenue Recovery Act is intra vires and is not open to any attack."

10. In coming to this conclusion, the court placed strong reliance upon the dictum laid down by the Supreme Court in Fatehchand Himmatlal and Others Vs. State of Maharashtra,

11. Dealing in particular with Notification No. S.R.O. 851/79 and the power of the State Government to issue the same u/s 71, the court observed at page 590 as follows :

"... If the State Government is authorised by the Legislature u/s 71 of the Act to extend the provisions of the Act, in public interest, for recovery of amounts due to specified institutions, the said legislation should be understood in the peculiar background as stated above ..."

12. The court, in paragraph 5, observed as follows (at page 589) :

" As stated, the real challenge is only against Notification No, S:R.O. 851/79. So long as Section 71 of the Act has not been precisely challenged by adducing cogent reasons, it is not for this court to pronounce upon the vires of the Act. So long as Section 71 of the Act stands, it is not open to the petitioners to challenge the Notification (S.R.O. 851/79) issued by the State Government, in exercise of the powers vested in it u/s 71 of the Act, as lacking in legislative competence. If the Act is within legislative competence or otherwise valid, the notification promulgated in exercise of the powers vested in the State Government under the Act is not open to attack as lacking in legislative competence. Apart from lack of legislative competence, Notification No. S.R.O. 851/79 is not challenged on any other ground."

13. The Division Bench has held that Section 71 of the Kerala Revenue Recovery Act and Notification No. S. R. O. 851/79 are perfectly valid and are within the legislative competence.

14. In this particular matter a writ petition under Article 226 of the Constitution is not the proper remedy as the jural relationship between the parties is based on a contract. As rightly pointed out by this court in David v. Kerala State Financial Corporation [1988] 1 KLT 585, it is not open to the petitioner to invoke the extraordinary jurisdiction vested in this court under Article 226 of the Constitution of India. The remedy is by way of filing a civil suit. In this context, it may also be pointed out that this writ petition cannot be allowed for another reason. The main attack is against exhibit P-3 demand notice dated July 4, 1984. After -this notice was issued the petitioner kept quiet till March 21, 1986. The writ petition is very belated. The writ petition is filed nearly one year and eight months later. It should be remembered that exhibit P-4 is only a procedural step in the follow-up action. Exhibit P4 was served on the petitioner in July, 1985, and the present writ petition was filed nearly eight months later. Judged from whatever angle, it is a belated writ petition and hence, on this ground alone, it is liable to be rejected.

15. Shri Sugunapalan contended that Section 32G which came into the statute book in 1985, can only be prospective in operation and it cannot be retrospective in operation. He also contends that if Section 32G is to be invoked, the formalities and procedure prescribed under that Section should be complied with. Nothing of that sort has been done in the present case and hence the action of the State Government is bad in law. In the present case, as rightly pointed out by Shri Radhakrishnan, the State Government does not rely upon Section 32G. Long before Section 32G came into the statute book Section 71 of the Kerala Revenue Recovery Act provided for the application of the proceedings under the Revenue Recovery Act for recovery of certain other amounts due to the public sector corporations. In exercise of its power u/s 71, S.R.O. 851/79 was issued on July 6, 1979. This court need not go into the question whether Section 32G is prospective in operation or retrospective in operation. That question does not

arise for consideration in this proceeding.

16. One interesting fact in this original petition is that though a lot of argument has been raised regarding legislative competence and the validity of Section 71 of the Revenue Recovery Act and Notification No. S.R.O. 851/79 in the relief portion they are not impeached. The relief is confined to quashing of exhibits P-3 and P-4 notices only. So long as the validity of Section 71 and Notification No. S.R.O. 851/79 is not impeached, it is not open to the petitioner to challenge exhibits P-3 and P-4 notices.

17. There are no merits in this original petition and the original petition is highly belated. The remedy of the petitioner is only by way of filing a civil suit, and it is not open to the petitioner to seek relief under Article 226 of the Constitution. In the result, the original petition is dismissed with costs.