(1981) 09 KL CK 0006

In the High Court Of Kerala

Case No : O.P. No. 116 of 1981-L

P. Krishnan Nambiar	APPELLANT
Vs	
The Executive Engineer, Additional Buildings Division and Others	RESPONDENT

Date of Decision : 01-09-1981

Acts Referred:

Constitution of India, 1950 — Article 299, 299(1)
Kerala Abkari Act, 1077 — Section 28
Kerala Forest Act, 1961 — Section 79

Citation : (1981) 09 KL CK 0006

Hon'ble Judges : Khalid, J

Bench : Single Bench

Advocate : P.K. Shamsuddin and A.A. Abdul Hassan, for the Appellant; K. Sudhakaran, General, for the Respondent

Judgement

Khalid, J.—The Petitioner is a P.W.D. contractor. The 1st Respondent, the Executive Engineer, issued a tender notice dated 1st August 1977 inviting tenders in respect of the construction of a permanent building for a school in Cannanore District. Pursuant to this notice the Petitioner submitted a tender which was the lowest. This tender though the lowest was not accepted and the Petitioner had to reduce it further after negotiations. The Petitioner avers that he fell ill and therefore could not take up the work or execute any agreement in respect of the work. The 1st Respondent therefore invited fresh tenders to which also the Petitioner submitted his tender. Since the Petitioner''s tender was not the lowest the work was allotted to another contractor.

2. While so, the Petitioner received a communication from the 1st Respondent stating that the Petitioner''s liability had been tentatively worked out based on the loss resulting in re-tender at Rs. 17,773. He was directed to remit the amount in the treasury within 15 days of receipt of the said notice failing which he was threatened with action under the Revenue Recovery Act. This notice is Ext. P-1. The Petitioner sent his reply Ext. P-2. The Petitioner has come to this

Court on being informed that the 1st Respondent has sent a communication to the 2nd Respondent, the Executive Engineer, Public Works Department not to disburse the amount on the bills submitted by the Petitioner in respect of other contracts taken by him and he apprehends that the 1st Respondent is contemplating revenue recovery proceedings to recover the loss occasioned because of the re-tender. The prayers in the petition are to quash Ext. P-1 and to issue a writ in the nature of Mandamus prohibiting the Respondents from recovering the amount shown in Ext. P-1.

3. In the counter-affidavit filed by the 1st Respondent it is stated that the Petitioner informed the 1st Respondent of his willingness to execute the work at a reduced rate than the amount tendered. The Petitioner''s tender was accepted and the selection notice was issued by the 1st Respondent on 26th July 1978. There was no response from the Petitioner in spite of repeated reminders. Ultimately he was told that the work would be arranged through some other agency at his risk and cost. Even after that the Petitioner did not respond and hence on 21st April 1979 the Department was constrained to terminate the contract of the Petitioner and the 1st Respondent by his proceedings of even date ordered that the earnest money deposit would be forfeited. Fresh tenders were called for and the only tender received was 62 per cent above estimate rates. The plea of the Petitioner that no proceedings under the Revenue Recovery Act can be taken in the absence of a written agreement is met with the plea that Clause 13 of Form 83 of works inviting tenders compelled the Petitioner to make good the loss sustained by the department due to rearrangement of work. The question that falls for decision under these circumstances is whether any proceedings can be taken against the Petitioner under the Revenue Recovery Act for recovery of the loss which the department has sustained because of the re-tender.

4. The learned Counsel for the Petitioner invited my attention to a decision reported in K.P. Chowdhary Vs. State of Madhya Pradesh and Others, in support of his contention that no steps could be taken against him in the absence of a written agreement. In that case the Appellant bid for two contracts at the auction and his Were the highest bids. As the amount of the contract money was more than what the Divisional Forest Officer could accept, the matter was referred to the Chief Conservator of Forests who had the necessary authority to accept the bids. After the close of the auction the Appellant had signed the contract form and a surety signed the security bond as required. Those documents were sent to the Chief Conservator of Forests for sanction and signature. Before however the Chief Conservator of Forests could accept the contract, the Appellant raised a dispute as to the marking of the trees and as that dispute was not settled to his satisfaction he refused to complete the contract or to pay the first instalment in respect thereof. He was informed that the contracts in his favour were cancelled by the Chief Conservator of Forests and that the amount of earnest money had been forfeited. He was also told that the two contracts would be re-auctioned at his risk. Accordingly there was a re-auction as a result of which the department

sustained a loss of Rs. 51,500. Proceedings were taken for the realisation of this amount whereupon the Appellant approached the court for his relief. The petition was heard by a Full Bench of the Madhya Pradesh High Court. The admitted position available in that case was that though the contract was signed by the Appellant it was not signed by the Chief Conservator of Forests. The question that arose before the Full Bench was whether the liability arising under the conditions of auction could be enforced and the deficiency on re-auction recovered as arrears of land revenue even without the execution of a valid contract in writing. The Full Bench held that though there was no contract in writing an implied contract resulting from the Appellant''s accepting the conditions of auction existed wherefore the authorities were entitled to recover the amount under the Revenue Recovery Act. On this view the petition was dismissed. It was under these circumstances that the matter went before the Supreme Court. The first question that was considered by the Supreme Court was whether the High Court''s view that Article 299 of the Constitution did not hit an implied contract and therefore the Amount due from such an implied contract could be recovered as land revenue. The second question was whether the arrears of land revenue could be recovered under any other provision of law.

5. After referring to the various decisions of the Supreme Court, the Supreme Court, held that since there was no contract between the Appellant and the Government before the bid at the auction nor any contract between him and the Government after the auction was over as required by Article 299(1) of the Constitution no implied contract could be spelled out between the Government and the Appellant and hence steps for recovery of money as arrears of land revenue was without jurisdiction. The Supreme Court repelled the contention put forward in that case that the word contract in Article 299 included an implied contract. After so holding the Supreme Court proceeded to consider the second question which is not strictly relevant for our purpose. This decision is therefore an authority for the position that proceedings to recover amounts due to the Government under the provisions of the Revenue Recovery Act are permissible only if there is a contract in writing satisfying the conditions laid down in Article 299(1) of the Constitution.

6. The learned Advocate-General drew my attention to a decision reported in A. Damodaran v. State of Kerala AIR 1967 S.C. 1533. That was a case which arose under the Abkari Act. Revenue recovery proceedings were sought to be faulted on the ground that there was no contract executed in accordance with the provisions of Article 299 of the Constitution. But the Supreme Court endorsing the view of the High Court held that proceedings under the Act were permissible because of Section 28 of the Abkari Act. Section 28 of the Abkari Act enables the authorities to recover from a person primarily liable to pay the duties etc., under the Act as arrears of land revenue. The Supreme Court held that Section 28 gave ample powers to the authorities to take steps for recovery of the abkari arrears under the Revenue Recovery Act. The following cases also were brought to my notice. In Special Deputy Tahsildar v. Kunju Moideen 1980 KLT 850 the question

arose whether a person who had not executed an agreement could be proceeded against u/s 68 of the Revenue Recovery Act for amounts that fell due under the Forest Act, 1961. A Division Bench of this Court held that since the amount sought to be recovered did not fall within the scope of Section 68 of the Revenue Recovery Act and what was sought to be realised from the Petitioner there was not money payable to the Government under the Forest Act or any rule made thereunder proceedings under the Revenue Recovery Act in the absence of a written agreement were not valid. In Vidyadharan v. State of Kerala 1980 KLT 421 Vadakkel, J., had to consider a kindred question and it was held that the contract which was flourished against the Petitioner therein did not specify the requirements of Article 299(1) of the Constitution and hence recovery of the amount under the Revenue Recovery Act was barred. In Bhaskaran Nair v. State of Kerala 1980 KLT 462 another Bench considered the validity of the proceedings initiated under the Revenue Recovery Act for the amounts due to the Government consequent upon auction for forest produce and the claim made u/s 79 of the Forest Act. The Division Bench held that though there was no written contract attracting Article 299 of the Constitution Section 79 of the Forest Act went to the rescue of the authorities, for, that Section conferred sufficient powers on the authorities to realise amount due under the Act as arrears of land revenue. Thus the source of power for revenue recovery proceedings was found in Section 79 of the Forest Act.

7. These authorities lay down clearly that revenue recovery proceedings can be initiated against a citizen only if a contract in writing satisfying the requirements of Article 299 of the Constitution is present and not otherwise. The three conditions necessary to attract Article 299 are: (i) the contract must be expressed to be made by the Governor or Governor-General, (ii) it must be executed in writing and (iii) the execution should be by such persons and in such manner as the Governor or Governor-General may direct or authorise. That is not to say that proceedings under the Revenue Recovery Act are barred in all cases where there is no agreement. If the Revenue Recovery Authorities can locate the exercise of a power under that Act in any other enactment like Section 28 of the Abkari Act or Section 79 of the Kerala Forest Act revenue recovery proceedings would be perfectly justified. In this case it is not disputed that there is no agreement between the Petitioner and the Government. In the absence of a written agreement any attempt to realise amounts from him as damages because of the re-tender will be without jurisdiction. The Petitioner is therefore well-founded in his attack against the proposed revenue recovery proceedings and he is entitled to succeed.

8. In view of this finding I do not think it necessary to consider the question alternatively raised by the Petitioner''s counsel that there has not been a proper quantification of the damages due from him because Ext. P-1 only indicates that the amount payable by him has been tentatively fixed.

9. In the result I allow this writ petition and declare that no proceedings against

the Petitioner shall be initiated under the Revenue Recovery Act for recovery of any loss sustained by Respondents 1 and 2 because of the re-tender.

10. Before parting with this case I would like to observe the need for an appropriate legislation to enable the authorities to recover amounts which are being lost to the Government on account of the absence of necessary provision enabling the Government to initiate revenue recovery proceedings. Section 28 of the Abkari Act and Section 79 of the Kerala Forest Act contain provisions which enable the Government to initiate revenue recovery proceedings for arrears under those Acts. I have come across several cases pending in this Court challenging proceedings taken under the Revenue Recovery Act for realisation of the loss incurred by the Government on account of the default of P.W.D. Contractors from executing agreements pursuant to the acceptance of their tender going scot free for the reason that they avoided execution of agreement as contemplated under Article 299(1) of the Constitution. If an appropriate provision is made in this behalf either by enacting a law or requiring the persons who take part in the bid to execute agreements which would bind them the Government can avoid recourse to the long drawn out civil litigation with its attendant uncertainties. The Supreme Court in K.P. Chowdhary Vs. State of Madhya Pradesh and Others, has indicated that a contract before the bid at the auction also would save the authorities in such cases.

11. The parties will bear their costs.

