

(1979) 11 KL CK 0001
In the High Court Of Kerala
Case No : W.A. No. 81 of 1979

State of Kerala

APPELLANT

Vs

Kerala Flour Mills

RESPONDENT

Date of Decision : 13-11-1979

Acts Referred:

Constitution of India, 1950 — Article 134A, 299, 299(1)
Forest Contract Rules — Rule 155
Kerala Abkari Act, 1077 — Section 28

Citation : (1979) 11 KL CK 0001

Hon'ble Judges : Gopalan Nambiyar, C.J.; Balagangadharan Nair, J

Bench : Division Bench

Advocate : N. Dharmadan, Government Pleader, for the Appellant; V. Sivaraman Nair and M. Krishna Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Gopalan Nambiyar, C.J.—The appeal is by the State against the decision of a learned Judge reported as Kerala Flour Mills, Mattancherry v. State of Kerala 1979 KLT 18. The learned Judge allowed the writ petition of the Respondent and declared that in respect of the dues to the Government for which revenue recovery proceedings were taken against him, the proceedings would not be valid if they are related to amount due under contracts not evidenced by written agreements. Having made this declaration, the learned Judge was further of the view that there was no need to grant the prayer asked for by the Respondent to quash Ext. P-4 demand as the same was only a plain and simple demand for payment of money and not any step taken under the Revenue Recovery Act. As Revenue recovery proceedings had commenced as admitted in the counter-affidavit, and as, according to the learned Judge such proceedings were not available in respect of contracts other than written contracts, the learned Judge restrained the Respondents to the writ petition (the Appellants before us) from continuing revenue recovery proceedings in respect of Ext. P-1. The O.P. was allowed to the extent indicated.

2. The Respondent was conducting a Wheat Roller Flour Mill in Cochin. His business is grinding wheat into rawa, atta and bran. The wheat was being supplied by the Food Corporation of India and the products were being returned at specified rates to the Corporation for distribution through recognised outlets. The Mill was to collect only the grinding charges. This arrangement was substituted by a new arrangement evidenced by Ext. P-1 order, It is enough to draw attention to Clause 3(V) of Ext. P-1, which stated:

3(v).--The Millers will pay the Government of Kerala Rs. 2 per quintal of maida and sooji towards supervision charges.

The validity of this demand of supervision charges once came up on an earlier occasion before this Court and was dealt with in Ext. P-3 judgment. A Division Bench of this Court noticed that it was conceded before the learned Judge against whose judgment the writ appeal was preferred that the impost was neither a tax nor a fee and was not supported by any authority of law to sustain the levy as a tax or a fee. It was sought to be sustained on the basis of concluded contracts. The Division Bench observed:

From the nature of the pleadings in those petitions and with the paucity of materials in the form of documents from which the existence or otherwise of the contract has to be spelt out it is undesirable that we launch on an enquiry whether there are obligations enforceable at law. We think that the learned Judge disposing of O.P. 2927 of 1972 has exercised his discretion, if we may say so with respect, right, in the above circumstances in declining to go into the question. The only thing we would like to do further is to make it clear that we express no opinion whatever on the existence of a contract or of any other enforceable obligations. These matters will have to be investigated and decided upon in other appropriate proceedings. We leave such questions therefore entirely open.

3. The Respondent committed default in respect of supervision charges from 1st September 1970 to 18th September 1971. On this latter date, i.e., 18th September 1971 the practice of collecting supervision charges was abolished by Ext. P-2 G.O. of the said date. Ext. P-4 demand was raised against the Respondent for the amount due for the period mentioned. That was a plain and simple demand to remit the supervision charges within the specified time limit. This was replied to by Ext. P-5. In the counter-affidavit it was stated on behalf of the Government that the demand had been followed up by revenue recovery proceedings. This is what was sought to be quashed in the writ petition.

4. For the State, reliance was placed on Section 68 of the Revenue Recovery Act which read as follows:

68.--Application of the Act for the recovery of certain other dues to Government.--
(1) All sums due to the Government on account of quit rent or revenue other than public revenue due on land;

All moneys due from any person to the Government which under a written agreement executed by such person are recoverable as arrears of public revenue due on land or land revenue, and all specific pecuniary penalties to which such person renders himself liable under such agreement or contract;

All sums declared by any other law for the time being in force to be recoverable as arrear of public revenue due on land or land revenue; and.

All fees and other dues payable by any person to the Government, may be recovered under the provisions of this Act.

(2) Any person who has received from the Government a free grant of money for any agricultural or other purpose, on default to refund the same consequent on his failure to observe any of the conditions of the grant, shall be liable to be proceeded against under the provisions of this Act for the recovery of the amount granted to him together with interest thereon and cost of process.

(3) Arrears of rent due to the Governments recoverable, as a result of any agreement, through a civil court, shall, notwithstanding anything contained in such agreement, be recoverable as an arrear of public revenue due on land under the provisions of this Act.

(4) For the removal of doubts, it is hereby declared that the provisions of Sections 44 and 50 shall apply in the case of recovery of any sum under the provisions of this section.

(5) Without prejudice to the provisions of Sub-section (4), where any person has, by a written agreement, agreed that specific immovable property belonging to such person shall be security for the payment by him of any tax or other amount due by him to the Government, any engagement entered into by such person with any one in respect of such property, during the period when the agreement is in force, shall not be binding on the Government.

The learned Judge took the view that the amount did not fall under the first three paragraphs of Clause (1) of the section. So far as the last paragraph is concerned the learned Judge observed thus:

5. Since I do not go into the question whether amounts due under an informal contract can be recovered at all by the Government, it is unnecessary for me to refer to many of the decisions cited at the bar, such as K.P. Chowdhary Vs. State of Madhya Pradesh and Others, : Mulamchand Vs. State of Madhya Pradesh, : Union of India (UOI) and Others Vs. N.K. Private Limited and Another, : and The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, .

6. The very fact that written agreements have been specially mentioned under the section-(written agreements alone are mentioned)-shows that the legislative intent is to make the machinery of the Revenue Recovery Act available for the recovery of debts due under written agreements. Specific reference to written

agreements is meant to exclude all other contracts. For amounts due under oral contracts evidenced by conduct or correspondence, the Revenue Recovery Act cannot be pressed into service. The "dues" mentioned under the last clause of Sub-section (1) of Section 68 can therefore be only dues other than contractual dues.

It was after the above expression of opinion that the learned Judge granted the relief in the way already stated.

5. We have some difficulty in endorsing the view of the learned Judge on the construction of the different clauses in Section 68(1) of the Act. We are inclined to think that paragraph (1) deals with quit rent or revenue; paragraph 2 with all monies due under a written agreement; paragraph 3 with amounts declared by any law to be recoverable as arrear of public revenue; and the last paragraph with the residuary category of all fees and other dues payable to the Government. We need not, and do not propose to, express our final views on the question as we are satisfied that, whether this be the view that we take or not, as far as the present case is concerned, the demand would be unenforceable whether by revenue recovery proceedings or even otherwise. Article 299 of the Constitution requires contracts with the Government to be executed in a particular form as stated in the Article itself. Article 299(1) reads:

299. Contracts.--(1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

The effect and scope of the Article, and in particular of a contract not conforming with the provisions of this Article, fell to be considered in numerous decisions. It is enough if we make reference to three of them viz. *K.P. Chowdhary Vs. State of Madhya Pradesh and Others*, *Mulamchand Vs. State of Madhya Pradesh*, and *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others*, . The first named decision recognised that there could be no implied contract with the Government which does not satisfy the provisions of Article 299 and that a contract which was not in compliance with Article 299 was not a contract in the eye of law at all and was null and void. The facts are very telling. In pursuance of notification issued, a Forest Contractor agreed to bid in auction. One of the conditions was that if the contractor failed to pay bid amount or complete conditions of contract, the contract has to be re-auctioned at the risk of bidder and deficiency was to be recoverable as arrears of land revenue. The Appellant before the Supreme Court was the successful bidder and had signed the contract and sent it up to the Chief Conservator. He however refused to complete the contract in view of certain disputes. The contract was re-auctioned and deficiency was sought to be recovered as arrear of land revenue under the Madhya Pradesh Land Revenue Code as the Forest Contract Rules provided for

recovery only after written contract had been executed. It was ruled that Rule 155 of the Land Revenue Code which provided for recovery of all monies due under any grant, lease or contract, cannot apply to any implied contract, and that in view of Article 299, there can be no recovery under the Rule, as there could be no implied contract in view of the mandatory provisions of Article 299. This principle was expounded in the second named decision and it was ruled that there can be no question of ratification of a contract which was void for non-conformity with Article 299; nor could such a contract give rise to any rights. The third decision reiterated the principle that non-conformity with Article 299 would render a contract with the Government null and void. In view of this principle which has been stated by the decisions above noticed, even assuming that the last paragraph of Section 68(1) were to take in contracts other than contracts or the agreements referred to and dealt with in the previous three paragraphs, such contracts have to run the gauntlet of Article 299 of the Constitution, and in that process they remain unenforceable and void. The result is that the Appellant derives no practical benefit or advantage even if we were to take the view that Clause 4 is wide enough to cover oral agreements or contracts. In that view the learned Judge's conclusion is correct.

6. The learned Government Pleader drew our attention to our judgment in W.A. No. 161 of 1977. In that judgment we noted Section 68(1) of the Revenue Recovery Act and expressed ourselves against the applicability of the Rule of ejusdem generis to the last paragraph of the section. We pointed out that there was no indication of a genus nor any sufficient enumeration of species to indicate a genus, so as to attract the ejusdem generis rule. We further observed that from the language and purport of the section, the expression "other dues" cannot be limited or controlled by the words immediately preceding. We have restated the same view in this judgment also. But the question whether, by reason of Article 299 of the Constitution contracts not conforming with the provision would cease to be enforceable was not considered by our earlier judgment in W.A. No. 161 of 1977. The learned Government Pleader also invited our attention to the decision of another Division Bench of this Court in W.A. No. 344 of 1975. That was concerned with the invocation of revenue recovery proceedings in respect of arrears of Abkari dues. It was pointed out that Section 28 of the Abkari Act was sufficient warrant to authorise the revenue recovery proceedings. This was the effect of the previous decisions of this Court in *Gourikutty Amma v. District Collector, Alleppey* 1974 KLT 103 and *Gourikutty Amma v. District Collector* 1976 KLT 29. In the case before us there is no provision to correspond to Section 28 of the Abkari Act. Therefore neither the decision in W.A. No. 344 of 1975 nor the two decisions referred to therein can be of any help to the learned Government Pleader.

In the result, the judgment of the learned Judge is confirmed, and the appeal is dismissed with no order as to costs.

Leave to appeal to the Supreme Court under Article 134A of the Constitution, is

orally prayed for. We do not think any substantial question of law of general importance arises. We reject the application for leave to appeal.