

(1990) 03 MAD CK 0074
In the Madras High Court

The National Engineering Co. Ltd.

APPELLANT

Vs

The Tahsildar and Others

RESPONDENT

Date of Decision : 23-03-1990

Acts Referred:

Constitution of India, 1950 — Article 299
Revenue Recovery Act, 1890 — Section 3

Citation : (1990) 2 MLJ 25

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Single Bench

Judgement

K.S. Bakthavatsalam, J.—The petitioner challenges the notice issued under Tamil Nadu Revenue Recovery Act to recover a sum of Rs. 4,60,750/- dated 12-4-1984.

2. The facts of the case are: The petitioner company is a small scale industrial unit at Ambaltur. When the third respondent invited tenders for the supply of M.S. Rounds of certain sizes and quantities, the petitioner took part in the tender. On 15-3-1980 it is alleged that the third respondent sent a telegram to the petitioner to furnish earnest money deposit. On 17.3.1980, the petitioner regretted his inability to provide the earnest money deposit as called for, but expressed its willingness to provide bank guarantee. It seems the third respondent accepted the offer of the petitioner only for 300 tonnes of 6 M.M. Rounds, 125 tonnes of 8 M.M. Rounds and 100 tonnes of 40 M.M. Rounds and called upon the petitioner to remit Rs. 1,13,338/- and to execute another agreement. It seems that there was exchange of letters between the petitioner and the third respondent. On 2-4-1980, the third respondent again sent a telegram to execute the agreement immediately and complete the supply. It is to be noted that the petitioner sent a bank guarantee. On 31-3-1980, the third respondent wrote a letter to the petitioner stating that the petitioner had not executed the agreement and commenced the supply of M.S. Rounds as required by the tender conditions and it is further suited that if the petitioner failed to execute an agreement on or before 7-4-1980, the supply order would be cancelled, and the supply arranged otherwise at the petitioner's risk and cost

and the petitioner will be declared as a defaulter hereafter. Ultimately, the petitioner stated in his letter dated 24.5.1980 in clear terms, that if the terms are not acceptable, the order should be deemed rejected and considered as cancelled. On 18-7-1980, a show cause notice was issued to the petitioner stating as to why the contract with the petitioner for the supply of M.S. Rounds may not be terminated and it was followed by another letter dated 22.9.1980 cancelling the contract. The petitioner gave a reply to the third respondent's letters dated 18.7.1980 and 22-9-1980 stating that there was no contract and the blame was to be on the third respondent if any for the loss.

3. At this stage, after four years, the petitioner received a letter from the first respondent citing a letter of second respondent, making a claim of Rs. 4,60,750/- towards the recovery of loss sustained by the Government by default in steel supply and proceedings under the Revenue Recovery Act were also threatened. The petitioner alleges that the notice of the third respondent is without jurisdiction and Section 52 of the Revenue Recovery Act, 1864 will not apply to the facts of this case because the contract was in the State of Kerala. It is also suited that Central Act I of 1890 is inapplicable and Section 3 thereof cannot be utilised. It is stated that there is no concluded contract to claim a breach of contract and that the tender was not concluded by paying earnest money deposit and that it was not reduced to writing. Assuming that there was a contract, the risk purchase was notified and the opportunity to know the correctness of the claim for damages was not given to the petitioner. It is also suited that when there is a dispute about the contract itself the second respondent cannot quantify the damages for breach of contract unilaterally and therefore it does not become due u/s 52 of the Act.

4. A counter affidavit also has been filed on behalf of the respondents 2 and 3 who are the main contesting respondents. A reading of the counter affidavit shows that there is no dispute about the facts of the case. It is stated in the counter affidavit that an agreement was executed on stamp paper worth Rs. 3/- on 10-3-1980 between the Governor of Kerala and the petitioner. It is stated that a final show cause notice was served on the petitioner dated 18.7.1980 as to why the contract with him for the supply of rounds may not be terminated at his risk and cost and why the firm should not be black-listed. When there was no response from the petitioner, it was notified that the work accorded to the petitioner for the supply of certain M.S. rounds is cancelled at his risk and cost and that steps to recover the loss incurred by the 2nd and 3rd respondents from the petitioner in arranging the purchase from other source will be taken in due course. The loss incurred was worked out to Rs. 4,60,750/- and notice was given to the petitioner in this regard on 29.6.1982. As there was no response from the petitioner, the respondents requested the Secretary to Government of Tamil Nadu to recover from the firm, the loss of 4,60,750/- sustained resorting to Indian Revenue Recovery Act 1890. On the ground that as per Clause 19(a) of the General condition of the contract and under para 3 of the agreement condition the loss sustained by the department in making alternate arrangements to

procure the materials can be recovered from the defaulter firm. It is stated that action is taken under the Revenue Recovery Act (Central Act) I of 1890. It is also stated that there is a concluded contract since the offer was accepted and an agreement was executed and the petitioner company agreed as per Clause 3 that all sums found due to the Government under or by virtue of the agreement shall be recoverable from the Company and his properties movable or immovable under the provisions of the Revenue Recovery Act. It is also stated that since it is a case of breach of contract the writ petition is not maintainable in law.

5. Mr. S. Raghavan, learned Counsel for the petitioner contends that it is true that the petitioner was the successful tenderer. But no contract was entered into between the petitioner and the second and third respondents. Learned Counsel states that, if Article 299 of the Constitution of India is not complied with, it cannot be said that there was a concluded contract between the State of Kerala and the petitioner. Assuming that there was a contract, no opportunity was given to the petitioner to know how the amount was arrived at. Learned Counsel states that if the respondents have incurred a loss, it is not open to them to arrive at the figure unilaterally and take proceedings under the Revenue Recovery Act. It is also stated that when the amount is disputed by the petitioner it is not open to the respondents to invoke the provisions of the Act.

6. Mr. P.D. Dinakaran, learned Counsel for the respondents 2 and 3 has produced before me a file. A perusal of the file shows that the offer of the petitioner has been accepted by the second respondent. But I am not able to see that any contract has been entered into between the petitioner and the respondents 2 and 3 in the form it has to be done, under Article 299 of the Constitution of India. Learned Counsel contends that it is open to the respondents to invoke the provisions of the Revenue Recovery Act and Central Act 1 of 1890 and the impugned action is taken only in that Act and that when a requisition has been sent to this State the first respondent issued the impugned notice.

7. After considering the arguments of learned Counsel for the petitioner and the respondents I am of the view that notice issued under the Revenue Recovery Act is wholly unsustainable. First of all I could see from the affidavit filed by the petitioner and the counter affidavit filed by respondents 2 and 3 and the records that there is no concluded contract between the petitioner and respondents 2 and 3. There is a letter in the file which shows that the petitioner's offer was accepted and it was duly communicated to the petitioner also. Apart from that there is no written agreement between the parties. Even the correspondence between the parties clearly shows that the respondents are asking for the execution of the agreement which was not done by the petitioner. As such I am not able to understand how the proceedings under the Revenue Recovery Act could be taken when there is a dispute. Further it is not open to the respondents also to arrive at the damages unilaterally and invoke the provisions of the Act. It was held by Ramaprasada Rao J. (as he then was) in a case reported in *KaruppiahNadar v. Commr. of Civil Supplies* (1972) 1 M.L.J. 99 that the

respondents in the absence of the consensus between the Department and the procuring agent, as regards the value of the shortages cannot invoke the provisions of the Revenue Recovery Act. Learned Judge has held that there must be consensus AD IDEM between the State and the defaulter as regards the nature and quantum of default if the State intends to set the provisions of the Revenue Recovery Act into motion for recovery of such arrears found and payable by the defaulters. In the very same case the learned Judge has also held in the matter of the recovery of the various amounts payable by the procuring agents, it cannot summarily invoke the provisions of the Revenue Recovery Act on the ground that there is a clause to that effect in the agreement between the parties in cases where such an agreement has been entered into. In other cases, where there is no such an agreement between the procuring agent and the State, it follows a FORTIORI that the provisions of the Revenue Recovery Act cannot be invoked at all. In P.A. Aliyar Saheb v. Independent Dy. Tahsildar, Pallipattu 88 L.W. 383 Ismail. J. (as he then was) has held, following the decision of Ramaprasada Rao. J. (as he then was), as follows:

Therefore, in my opinion, the result of the above decisions is that in a case where the amount is recoverable only as "Sum due to the State Government" falling within the scope of Section 52 of the Revenue Recovery Act and where a person from whom the said amounts is sought to be recovered disputes either the existence of his liability or the extent of his liability, before resort "to the provisions of the Revenue Recovery Act can be had, there must be an enquiry by the State in which the alleged defaulter is entitled to participate and wherein the basis of the liability as well as the amount claimed by the State must be made known to the alleged defaulter who is given an opportunity to place all the materials and circumstances which, in his opinion, go to exclude or eliminate his liability itself or to reduce the liability, and a determination based on such enquiry should be arrived at with reference to the existence or the extent of the liability of the defaulter. That is exactly what Ramaprasada Rao, J. himself meant, is made clear by two of his subsequent judgments.

8. In view of statement of law enunciated by Ismail, J. (as he then was) I am of the view that the writ petition should be allowed. There will be a direction to the third respondent not to proceed with the recovery of the amount under the provisions of the Revenue Recovery Act. It is also made clear that respondents 1 and 2 cannot initiate the recovery proceedings under the Revenue Recovery Act without first holding an enquiry after communicating to the petitioners concerned the particulars of the amount claimed from them and how the same is arrived at and giving them an opportunity to place all the materials in their possession to substantiate their case, if they dispute either their liability and after considering the materials so placed and ascertain the amount due from them on the basis of such enquiry shall pass orders. The writ petition stands allowed subject to the above directions. There will be no order as to costs.