

**(1984) 12 MAD CK 0043**  
**In the Madras High Court**

V.D. Swami and Co. Ltd.

APPELLANT

Vs

The Chief Engineer, Public Health Engineering Department,  
Govt. of Kerala and Others

RESPONDENT

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**Date of Decision :** 05-12-1984

**Acts Referred:**

**Citation :** (1986) 99 LW 817 : (1987) 1 MLJ 120

**Hon'ble Judges :** G. Ramanujam, J

**Bench :** Division Bench

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**Judgement**

G. Ramanujam, J.—In this Writ Appeal, the order of V. Ramaswami, J, dismissing the Writ Petition No. 3452 of 19 78 in limine has been challenged.

2. The appellant herein entered into a contract with the Chief Engineer, Public Health Engineering Department for the supply of 10 Nos. of

Chlorine Tonne Containers at the rate of Rs. 8,240 each F.O.R. Ernakulam Goods Shed. As per the terms of the contract, the appellant

dispatched 10. Nos. of Chlorine Tonne Containers after due inspection by Lloyds Registet of Industrial Services along with their certificate to

Ernakulam Goods Shed on 3rd December, 1973 and a bill dated 4th December, 1973 for a sum of Rs. 93,359.20 to the Executive Engineer,

Public Health Central Stores, Cochin. As per the contract, 90 per cent of the total value Rs. 84,023.28 was paid to the appellant on presentation

of the documents and the balance of 10 per cent was payable on a later day. However, the Chief Engineer, Public Health Engineering Department,

not only withheld the balance of 10 per cent but also raised a demand for repayment of the sum of Rs. 84,023.28 earlier paid to the appellant.

When the appellant resisted the said demand for repayment of 90 per cent of the value of the goods supplied, the 1st respondent has proceeded to invoke the provisions of the Revenue Recovery Act and to take coercive proceedings under the provisions of that Act for recovery of the amount of Rs. 84,023.28 from the appellant. It is at that stage, the petitioner came to the Court seeking a writ of certiorari to quash the notices, dated, 17th April, 1978 and 23rd May, 1978 issued by respondents 3 and 4 threatening to recover the amount by invoking the provisions of the Revenue Recovery Act. The said writ petition was dismissed by the learned single Judge at the stage of admission on the ground that it is not possible to go into the disputed questions under Article 226 of the Constitution, as lot of evidence is necessary to find out as to whether there is any breach of the contract on the part of the appellant, or whether the breach was on the part of the Government and whether any amount is due by the appellant to the Government or by the Government to the appellant. Such being the position, the proper remedy for the parties would be to go before the Civil Court. The said decision of the learned single Judge has been challenged in this appeal mainly on the ground that the liability of the appellant to refund the amount representing 90 per cent of the contract value having been disputed, it is not open to the respondents to invoke the Revenue Recovery Proceedings.

3. According to the Learned Counsel for the appellant, wherever the liability is disputed or the quantum of the amount sought to be recovered under the provisions of the Revenue Recovery Act is disputed, the provisions of the Revenue Recovery Act cannot at all be invoked and it is only in cases where the liability is not disputed and the quantum has been specified under the terms of the contract the Revenue Recovery Act can straight away be invoked, but the provisions of the Act cannot be applied to cases where either the liability or quantum is disputed by to party concerned. In support of the said submission, the Learned Counsel refers to the following decisions. M.C. Mulajkar Vs. Govt. of Andhra Pradesh and Others, and A.R.A. Karupiah Nadar and Others Vs. The Commissioner of Civil Supplies, Madras and Another, . It is no doubt true, the said decisions proceed on the basis that once the liability in general or the quantum of the liability is disputed, the provisions of the Revenue

Recovery Act cannot be invoked by the Government. However, the said judgment was considered by Ismail", J., in P.A. Aliyar Saheb v.

Independent by Tahsildar, Pallipattu (1975) 88 L.W. 383, and the learned Judge after a detailed consideration of the above two decisions as also

other decisions on the point, ultimately culled out the following principles as arising from all the relevant judgments:

Where a person from whom the amount 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 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 existence or the extent of the liability of the defaulter.

On a due consideration of the matter, we are in entire agreement with the view taken by Ismail, J. in the above case. As pointed out by the learned

Judge if it is to be held that a mere existence of the dispute as to the liability or as to the extent of the liability will exclude the applicability of the

provisions of the Revenue Recovery Act, then those provisions of that Act can be set at naught " by every person by simply raising a dispute about

his liability or the extent of liability. Therefore merely on the ground that the liability or its extent is disputed, resort to the provisions of the Revenue

Recovery Act by the Government cannot be excluded. But, at the same time, the person against whom the provisions of the Act are invoked",

should know as to how the liability or the extent thereof was arrived at by the Government and he should be given an opportunity to put forward

his case when the liability or the quantum thereof is determined by the Government. Thus, the view taken by Ismail, J., gives due scope for the

application of the provisions of the Act and at the same time protects the interests of the parties against whom the provisions are sought to ,be

invoked. The said view of Ismail, J. appears to be consistent with the later decision, dated 21st June, 19 73 rendered by Ramaprasada Rao, J. in

Writ Petition No. 2474 and 2505 of 1971. In that. decision, the learned Judge has made the following observations:

It is no doubt true that recourse to proceedings under the Revenue Recovery Act cannot be resorted to by the State when the basis for the proceedings, namely, the demand raised, is uncertain, disputed and not accepted by the person against whom such proceedings are initiated. This position is well settled. Also, in a case where the affected person is not given an opportunity to state his objections to a given demand and if action under the Revenue Recovery Act is taken capriciously and arbitrarily in violation of the principles of fair play and fair hearing, then the element of suspicion enters into the claim and Courts ordinarily would doubt its enforceability without further elucidation or proof. But in a case where the principles of natural justice are remembered and the person against whom the demand is raised, is called upon to state his objections to such a levy and after a reasonable investigation and mutual discussion between the State and the citizen, the said amount is arrived at or revised, then it cannot be said that the affected party would still be entitled to invoke the doctrine of natural justice so as to avoid the liability to respect the demand raised, which demand has been quantified after discussion and negotiation.

4. Thus, the legal position as culled out from the relevant decisions may be stated as under:

(i) Before invoking the provisions of the Revenue Recovery Act, there should be a determination or adjudication as to the liability of the person

concerned or the extent of his liability.

(ii) The determination and adjudication need not take the place of determination and adjudication in a Civil Court, but the determination or

adjudication should be in the nature of a preliminary ascertainment of the existence or the extent of the liability and such determination will be a

condition precedent for invocation of the provisions of the Revenue Recovery Act.

5. The question is whether the said condition precedent for invoking the provisions of the Revenue Recovery Act has been satisfied in this case. It

is seen that as soon as the appellant received a notice from the 3rd respondent seeking to invoke the provisions of the Revenue Recovery Act to

recover the sum of Rs. 80,804.53, the appellant requested him to furnish details as to how the entire sum paid is sought to be recovered and stated

that unless the question as to who committed the breach, is decided, the demand could not be sustained. Then, the 3rd respondent informed the

appellant as to how the amount sought to be recovered from the appellant has been arrived at. Then, by a letter, dated 12th June, 1978 the appellant complained that the contemplated proceedings under the Revenue Recovery Act are highly incompetent as the dispute has to be determined and adjudicated by a Civil Court and that in any event, he is entitled to a fair and personal hearing on the matter during which all the materials required and records will be placed before the authority for taking a decision in the matter. It was also pointed out by the appellant in that letter that the invocation of the provisions of the Revenue Recovery Act without giving an opportunity to the appellant will amount to clear violation of the principles of natural justice and the action will be an arbitrary one. In spite of the letter, the appellant was not given an opportunity to put forward his case as against the proposed demand for recovery of the amount said to be due from the appellant. With reference to these facts, the appellant's grievance in the writ petition should be considered.

6. Though the appellant has come forward with a case that once the claim made by the Government is disputed, the Revenue Recovery proceedings cannot be invoked with reference to such claims, we are not inclined to agree with such a wide proposition. As already stated, if such a contention were to be accepted, the person sought to be proceeded against under the provisions of the said Act can easily avoid the application of the same by merely raising a dispute as to the liability or quantum thereof. That will completely defeat the object of the provisions of the Act which are intended to safeguard the interest of the Revenue and to facilitate easy and quick collection of the amounts due to the State by the citizens. However we are of the view that before the amount is sought to be recovered by invoking the provisions of the Revenue Recovery Act, the appellant should be given an opportunity to put forward his case either as to the liability or the quantum thereof and that a tentative decision has to be arrived at as regards the liability or quantum thereof after hearing the appellant, which is a condition precedent for invoking the provisions of the Act, as has been held earlier. Though the appellant sought an opportunity to put forward his case before the 3rd respondent, no such opportunity was given and the provisions of the Act are being invoked without reference to the defence which the appellant intends to put forward.

7. Learned Counsel for the appellant contends that the 3rd respondent cannot invoke the provisions of the Revenue Recovery Act for realising the arrears due to another State, which is the case here. But this objection of the Learned Counsel for the appellant ignores the specific provisions contained in Section 10 of the Central Revenue Recovery Act, 1890 which specifically empowers the Collectors in one State to recover the amount due to another State and to remit the same after deducting the corresponding expenses incurred to another State. In view of the said statutory provision, the contention of the Learned Counsel that the 3rd respondent has no jurisdiction to invoke the provisions of the Revenue Recovery Act for realising the arrears due to another State, cannot be accepted.

8. In view of the fact that giving an opportunity to the person concerned and hearing his objections being a condition precedent for the invocation of the provisions of the Revenue Recovery Act, the proceedings of the 3rd respondent dated 17th April, 1978 and 23rd May, 1978, have to be quashed and are quashed accordingly. Consequently, the writ appeal is allowed. There will be no order as to costs. Appeal allowed.