

(1990) 07 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 10769 of 1995

Village Industries Development Centre	APPELLANT
Vs	
Kerala Khadhi and Village Industries Board	RESPONDENT

Date of Decision : 25-07-1990

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 69(2), 7, 71

Citation : (1996) 2 KLJ 253

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

Bench : Single Bench

Advocate : U.K. Ramakrishnan, E.K. Madhavan and V. Krishna Menon, for the Appellant; Jose K. Kochupappu), for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—The question involved in this case is as to whether respondents 2 to 4 are legally entitled to recover commission or collection charges on initiation of revenue recovery proceedings, even though no amount was recovered through the proceedings initiated u/s 71 of the Revenue Recovery Act, 1968. Petitioner is a registered society, set up and developed at the instance of the Kerala Khadi and Village Industries Board for the purpose of manufacturing and supplying 7-Spindle Muslin Charkhas. Petitioner had availed of a loan from the respondent-Board. Total amount advanced by the Board was Rs. 17,85,871. Petitioner could not repay the amount due to various financial difficulties. Board then initiated action for recovery of the amount. Total amount due to the Board as on 31.3.1985 was Rs. 23,50,303.67. There was some litigation between the petitioner and the respondent-Board. However, no amount was recovered from the petitioner through revenue recovery proceedings.

2. In order to amicably settle the matter, petitioner sent a letter dated 17.11.1994 putting forward certain suggestions/proposals to the Board. Respondent-Board vide their letter dated 21.1.1995 informed the petitioner that it was prepared to settle the accounts as suggested by petitioner, provided

petitioner was prepared to accept the conditions mentioned in that letter. However, with regard to condition No. 3, petitioner informed the Board that petitioner would remit collection charges at the rate of 5% if demanded by the revenue department. Petitioner subsequently by letter dated 2.3.1995 informed the Board that claim for collection charges was illegal and requested the Board not to include the amount towards collection charges in the final payment to the Board. Board by letter dated 21.3.1995 requested the petitioner to remit the outstanding amount of Rs. 23,50,303.67 and Rs. 35,255/- towards contingency charges. Board also requested the petitioner to remit an amount of Rs. 1,17,515/- towards collection charges stating that it would be refunded if the revenue department did not make any claim for it.

3. Petitioner complied with all the conditions mentioned in Ext.P2 letter and remitted the entire amount of Rs. 25,03,073.67 on 24.3.1995. Pursuant to this, Board vide letter dated 7.4.1995 informed the District Collector the factum of remittance of the entire amount by the petitioner and requested him to return the RRC. It is evident from the said communication, Ext. P5, that respondent-Board had stated that no amount was realised through revenue recovery proceeding. Petitioner later made repeated representations for refund of the amount of Rs. 1,17,515/- paid towards collection charges. However, no action has been taken by the Board. Petitioner then issued a lawyer notice to the respondent dated 7.6.1995 directing the Board to pay the amount with 18% interest. Since no action has been taken, petitioner has approached this Court for a declaration that petitioner is not liable to pay any amount as collection charges as arrears were not collected/realised under the provisions of the Revenue Recovery Act. Petitioner also is seeking a direction to the Board to refund the amount of Rs. 1,17,515/- with interest at 18% from 24.3.1995 till date of actual payment/realisation.

4. Counsel for the respondent-Board submitted that revenue recovery charges has to be remitted in the office of the District Collector, since they have initiated proceedings. It was pointed out by counsel for the Board that eventhough the amount was not realised through revenue recovery proceedings, as per Section 7 of the R.R. Act and other Governments orders, a demand notice was served on the petitioner on 4.8.1987. As per the Act 5% of total dues should be paid to revenue authorities as collection charges, which according to Board, is a mandatory provision. They relied on Circular dated 13.10.1992 which says that collection charges shall be deducted from the amount recovered and the balance alone shall be payable to the institutions notified u/s 71 of the R.R. Act, or a statutory body. It is also pointed out while revenue recovery proceedings are in force, the institutions or statutory bodies which have given advice for recovery of arrears due to them, are not permitted to receive the amount directly from the defaulters under the statute.

5. I heard counsel for the petitioner and learned counsel appearing for the respondents. Section 71 of the R.R. Act enables the Government to declare that

Revenue Recovery Act is applicable to any institutions in public interest for recovery of amounts due from any person or class of persons. On such declaration all the provisions of the Act shall be applicable for recovery of the said amount. It is admitted case that Revenue Recovery Act is made applicable to the first respondent-Board. Accordingly a requisition was made by Board to the second respondent u/s 69 (2) of the Act for realisation of Rs. 25,00,966.32 from the petitioner.

6. Accordingly a demand notice u/s 7 of the Act was issued from the office of the Tahsildar, Neyyattinkkara to the petitioner on 25.6.1987. It is seen that after initiation of revenue recovery proceedings by the Tahsildar, an agreement was reached between the petitioner and first respondent in the matter of repayment of amount. On the basis of the said agreement, the amount was repaid. It is admitted fact that amount was realised not through invoking the provisions of the Act. The question is whether petitioner is bound to pay collection charges on the mere initiation of revenue recovery proceedings by issuing a demand notice by the Tahsildar under the Act. Section 7 is intended only to give an opportunity to the defaulter to remit the amount demanded, as held by this court in *K.T. Thomas v. Tahsildar*, 1983 KLT 710. In other words, coercive steps will be taken under the Act only if the amount is not paid, after receipt of the demand notice u/s 7. In a case where coercive steps have not been taken under the Act, whether the defaulter is bound to pay collection charges for recovery of the amount to the revenue recovery authorities. Rule 5 (1) of the Revenue Recovery Rules deals with collection of charges at the rate of 5% on the arrears collected under the provisions of the Act on behalf of any institution notified u/s 71. Evidently Rule 5 refers to realisation of collection charges only from the arrears collected under the provisions of the Act. In other words, if the arrears are collected under the provisions of the Act, then only the question of collection charges will arise. In the instant case it is evident that amount was not collected through revenue recovery proceedings, but the defaulter straightaway paid the amount to the requisitioning authority. It is evident from Rule 5 (2) that collection charges shall be deducted from the amount recovered and the balance alone shall be payable to the institution. In other words, applicability of Rule 5 arises only in a case where amount has been recovered through the proceedings initiated under the R.R. Act. Identical question came up for consideration before a Division Bench of this Court in *Kadeeja Beevi v. Kerala Financial Corporation*, 1985 KLT 741, wherein a Division Bench of this Court took the view that question of revenue recovery commission or collection charges could and would arise only where there is collection of arrears under the provisions of the Act on behalf of any institution notified u/s 71 of the Act. In view of the above mentioned authoritative pronouncement of this Court, I am inclined to take the same view in the instant case. Admittedly the amount was not recovered through the proceedings initiated under the R.R. Act, even though a demand notice was issued by the Tahsildar. Mere initiation of demand notice would not enable the authority to take collection charges at the rate of 5% on the amount recovered.

Amount was recovered, as already stated, not through revenue recovery proceedings, but the amount was directly paid by the defaulter to the requisitioning authority. In other words, revenue recovery authorities have not collected any amount.

In view of the above mentioned circumstances, I allow this Writ Petition and direct respondents to refund the amount of Rs. 1,17,515/- with interest at 6% per annum to the petitioner from 24.3.1995 till date of actual payment.