

(2001) 01 KL CK 0006

High Court Of Kerala

Case No: O.P.No. 789 of 2001

T.P. Aboo

APPELLANT

Vs

District Collector and
Others

RESPONDENT

Date of Decision: Jan. 25, 2001

Acts Referred:

- Constitution of India, 1950 - Article 21

Citation: (2001) 1 KLJ 461

Hon'ble Judges: M. Ramachandran, J

Bench: Single Bench

Advocate: K.B. Mohamed Kutty, for the Appellant; N. Manoj Kumar Govt. Pleader, for the Respondent

Final Decision: Dismissed

Judgement

M. Ramachandran

1. By order dated 3.1.2001, the District Collector, Kannur had ordered for arrest and detention of the petitioner, Sri, T.P.Aboo, finding that there was wilful default of payment of legitimate dues to the Government amounting to Rs. 7,78,384/-. The firm, Hill Produce Corporation, Valapattanam had defaulted in payment of sales tax dues and Mr.Aboo was one of the three partners of the firm. The liability is not disputed, but he had pleaded that he had no means to make the payments. Files disclose that similar proceedings have been initiated against another partner as well, and the third partner is no more. Sri. Mohamed Kutty, counsel for the petitioner, submits that there were procedural lapses, vitiating the order of arrest, and there were no preconditions existing, as envisaged u/s 65 of the Revenue Recovery Act, justifying the order. Sri.Aboo has been arrested and is in jail, and immediate release was sought for.

2. The petitioner had been ordered to be arrested earlier, on 23.2.2000 and he had successfully challenged the proceedings in O.P.No. 9395/2000 (See T.P.Aboo v. District Collector - KTR). This Court at that time had directed as following:

In the circumstances obtained, the District Collector will give an opportunity to the petitioner to adduce evidence regarding his means, If a report from the Tahsildar is to be relied on the Tahsildar also may be examined as a witness for the revenue, so that the defaulter will get an opportunity to cross-examine him. It will be open for the revenue also to adduce evidence. The District Collector must consider the evidence before him objectively and take a decision as observed in the decision reported in Joseph v. State of Kerala (1972 KLT 601)

The order had been set aside giving an opportunity for the Revenue as well as the defaulter to let in evidence.

3. Counsel for the petitioner understands the above directions as instructions to the Revenue Authorities to start the process de novo, and from square one. He points out that the respondent also had understood the directions only as above, as would be seen from the counter affidavit filed. According to him, a fresh new Form No. 19 notice had therefore become essential. He does not however requires the respondents to go earlier than that, by issuing Form No. 10 notice as well. The notice which previously required his attendance months back, according to him, has lost relevance since (he clock cannot be turned and set back in real life. In so far as such notice did not precede the proceedings, he submits that the present orders are non est, Reliance is placed on the decision reported in Muralidharan v. State of Kerala (1995 (2) KLT 176) urging that since proceedings u/s 65 was a drastic method of recovery, it is essential that statutory requirements should be complied with stricto sensu.

4. Commenting upon the steps taken by the Revenue after the previous judgment, the counsel submits that only an empty procedure had been followed. Notice was not served on the petitioner, and in the enquiry, the report of the Tahsildar was not given. No opportunity had been given for an effective cross-examination of the officer, and according to him the District Collector had not moved any length from his earlier erroneous stand as he has observed in Ext.P9, the impugned order, that

From the averments made during the argument and from the fresh report of Tahsildar I am personally convinced that Sri.T.P. Aboo is financially sound and wilfully trying to evade from the payment of legitimate dues to the Government.

Petitioner particularly relied on the observation of the District Collector that "the Advocate could not confute (refute?) this contention and he had no records to prove that the defaulter is a penniless poor man." Citing the decision of the Supreme Court in [Jaydayal Poddar \(Deceased\) through L.Rs. and Another Vs. Mst. Bibi Hazra and Others](#), it was submitted that in these matters mere conjectures are not substitutes for proof, and the

burden for substantiating the allegations was on the revenue, and this had not been satisfactorily discharged.

5. Petitioner also relied on M/s Arasan & Co. v. State of Kerala (1993 (1) KTR 628), to urge that the District Collector was bound to follow in letter and spirit the judgment in O.P.No. 9395/2000. Adverting to Bijilo Joseph v. District Collector (1974 KLT (SN) 13 Case No. 35), he submitted that whether or not a person has means could not be ascertained from his life style or capacity of the relatives. Reference had also been made to Joseph v. State (1972 KLT 601), a Bench decision, and particularly to paragraph 10 wherein it had been exhorted that materials collected adverse to the defaulter was necessarily and mandatorily to be supplied to him so as to enable the defaulter to effectively establish his stand.

6. Sri.Manoj, learned Government Pleader, had opposed the application. He submitted that the earlier judgment imposed a duty to give an opportunity to the petitioner to effectively participate in the proceedings and to project his contention. This had been adequately ensured and sufficient opportunity given. The follow up proceedings given are narrated in paragraph 5 of the statement filed by the Deputy Collector, extracted herein below:

"5. Subsequent to Ext.P4 notice dated 9-11-2000 was issued to the petitioner directing him to appear before the District Collector on 13-11-2000 at 10.00 A.M. for personal hearing and to file objection if any against the realisation of sales tax arrears. Since the petitioner refused to accept the said notice when it was tendered to him it was affixed at his residence at House No. 6/489, Kannur-I Village. In accordance with the directions of the said notice the petitioner appeared before the District Collector on 13-11-2000 for hearing. The hearing was adjourned to 21-11-2000. On 21-11-2000 the petitioner submitted Ext.P5 objection wherein he has stated that objection filed by the petitioner dated 8-3-2000 to the notice issued in form 19 may be treated as part of the objection now filed by him. IT was also stated that the objection dated 23-3-2000 is also to be treated as part of the objection dated 21-11-2000. On 21-11-2000 both the petitioner as well as the other partner Sri. T.P Ummerkutty was heard and the counsel for the petitioner was also given a chance to cross-examine the Tahsildar. The case was then adjourned to 27-11-2000. On that day also the Tahsildar was cross-examined. Thereafter the case was adjourned to 12-12-2000 and the Tahsildar was directed to give further evidence regarding the financial position of the defaulter. On 12-12-2000 the report submitted by the Tahsildar was given the opportunity to corss-examine the Tahsildar. The hearing was concluded on 12-12-2000.

Procedural safeguards are intended to ensure that a citizen is not subjected to arbitrariness and his legal rights, status and dignity are ensured even when he is forced to undergo coercive proceedings. Taking note of the circumstances catalogued in the counter affidavit, it is found that as respects the legal formalities to be observed, there can never be a cause to complain. It was not necessary to issue a fresh Form No. 19

notice, and the objection has no substance, being only technical. Procedure is not to be understood having an end to itself, but it facilitates and ensures that due process of law is observed. In the Revenue Recovery Act, it is incorporated as an inbuilt measure so as to see that principles of natural justice are duly complied with. The cited cases, referred to earlier, lay down the importance of these safeguards, and in their application, I do not see that there has been any short falls.

7. After examining the facts that had been placed before him, the District Collector has come to a definite, finding that he is convinced about the financial soundness of the petitioner. According to him, the petitioner was wilfully trying to evade payments. Report of the Tahsildar will tend to show that he is carrying on life effortlessly, and with amenities which are normally considered as luxuries. I will refer to paragraph 1 of the report (Ext. P7) in this context:

1. T.P.Aboo, one of the parties of M/s.Hill Produce Corporation, Valapattanam is residing in a house situated in TS No. 837, Ward No. 1, B 16 of Kannur-I Village measuring 10 1/2 cents which is in the joint possession of his wife and 6 children. On enquiry it is understood that his wife is owned rented quarters in Chirakkad village and earns nearly Rs. 5000 p.m. Two cars, Nos.KL 13 D 1992 in the name of his daughter P.M.R.Ayisha and KL 10 E. 5515 in the name of his son-in-law, are used by him. He is leading a luxurious life. There are two Air Conditioners, T.V., V.C.R., Refrigerator, Washing Machine in his house. It is presumed that he earned all the properties in the name of his wife and children with purposefully intended to evade from the payment of sales tax. He has not included in the ration card and Electoral roll attached to the above mentioned house building.

8. The files disclose that he was abroad for quite some time. It may well near be impossible to assess the real material worth of a person, who deliberately makes the informations scarce, but in such cases, I do not think that the State is helpless though the legal formalities are loaded against the State machinery. When amounts collected as tax on behalf of the State and retained as unpaid, as the Government Pleader points out, it is a crime against people. Every efforts, therefore, according to me, is to be taken to see that there is no unjust enrichment at the cost of the people. In the above background, I may examine the provisions of the Revenue Recovery Act, and see whether it has sufficiently strong teeth for attempting a bite. In fact it is seen that in its wisdom the Legislature has foreseen such contingencies and has evolved methods to over come the situation.

9. The objective and preamble of the Revenue Recovery Act do not give much guidance, perhaps because the attempt was to consolidate the statutes. Section 5 of the Act prescribes the methods for recovery. The methods which could be adopted by the State are:

(a) By attachment and sale of the defaulter's movable property;

(b) by attachment and sale of the defaulter's immovable property;

(c) by appointing an agent for the management of the defaulter's immovable property;

(d) by arrest of the defaulter and his detention in prison."

These are distinct measures which could be employed, as could be seen from the section. One is not dependant on the other. Chapter II deals with recovery by attachment of movable articles, and Chapter III deals with the three other methods. Section 65 comes within the said Chapter.

10. As pointed out by the Government Pleader, arrest referred to in section 65 is a special remedy. The State is bound to maintain the arrested person appropriately, and therefore it could be found that the State by resorting to action under the provisions not only is not able to realise the amounts from him, but is simultaneously at a disadvantage to expend for his nourishment while in the jail. There should, therefore, be a motive or a principle behind such a statutory prescription. Arrest of a person, and detention in civil prison is regarded as a circumstance which is *infra dig* for a person who enjoys some status in society. It is likely to be avoided by any person, normally at any cost. I see the provisions for an arrest therefore as a clever method playing on the psychological strings of the defaulter and those connected with him. Normally for liability of an individual, as of right State cannot compel any other person to discharge the debts, however near he is. But it is presumed that if the kith and kin, friends, relatives or his well wishers cherish the company of the defaulter, and do not wish him to be seen separated and put behind the bars, it is likely that some of them may come forward with helping hand, with an offer to pay up. Thereby the States's interests could be safeguarded, and parties concerned might settle their accounts at leisure. As the records in the present case show, petitioner was abroad, and it may be that his toils there might have benefitted his relatives. They enjoy the luxuries and petitioner may have nothing to boast of except the apparels he wears so as to hoodwink the State. But in his difficult days, enforced by Section 65, perhaps the relatives might be willing to open their purse for him, so that the embarrassment could be avoided. That any of them have not moved for him so far is his own predicament.

11. When this is the underlying principle for incorporating the provisions of the statute, so long as it is not subjected to specific attack, I am constrained to uphold the legislative mandate. Other principles, including the rights under Article 21 of the Constitution of India need not be incorporated here. The constitutional validity of the Act, in a different context, of course has been upheld by a Division Bench (See 1972 KLT 601). Till such time the petitioner remains bound to honour his commitments to the State, he cannot claim that his civil liberties also have to be kept in tact so states the law. Such persons altogether belongs to a different class, and can be subjected to disabilities prescribed by the statutes. Being poor is not a crime, of course, but only can be considered as a disability. But this plea that he has no means to pay may not be available when the State decides to

enforce a claim through the procedure prescribed by the Revenue Recovery Act.

12. I am fortified in my above observations, especially in view of the contingencies incorporated in Section 65 of the Revenue Recovery Act. In a circumstance where the proceedings of a sale of the property of the defaulter and his surety are not sufficient to liquidate the arrears with interest thereon and cost of process, the legislature authorises issue of a warrant for arrest of the person. Therefore, not only penury, but even part payment will not come to the rescue of a person to claim that he is immune from arrest as the State's interest to recover its debt are of paramount importance. That the provision has been incorporated with sufficient thought and foresight is further evident from the circumstance that a surety is exempted from the ignominy of arrest, expressly by section 67 of the Act. A defaulter therefore cannot escape and avoid an arrest by pleading that he has no means to discharge the debt.

13. In view of the aforesaid conclusion, I have to hold that the proceedings initiated against the petitioner cannot be faulted. He had been evading payment, and that alone is sufficient justification for initiating proceedings u/s 65 of the Act. In the result, I hold that the Original Petition is misconceived and deserves to be dismissed. It is submitted by the counsel for the petitioner that the order does not show the period of detention. The Government Pleader submits that it is for three months as at present. This is recorded.