

(2016) 03 KL CK 0027

High Court Of Kerala

Case No: Writ Petition (C) No. 16302 of 2011

Koshy G.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: March 3, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Kerala Panchayat Raj Act, 1994 - Section 215(9)

Citation: (2016) 4 KLT 689

Hon'ble Judges: K. Harilal, J.

Bench: Single Bench

Advocate: Johnson Gomez and S. Biju, Advocates, for the Petitioner; Noushad Thottathil, Government Pleader, P.J. Mathew and Ajith George, Advocates, for the Respondents

Final Decision: Allowed

Judgement

K. Harilal, J. - The petitioner retired on superannuation from the service of the 1st respondent as Junior Superintendent on 13/11/2004. The 4th respondent issued a letter dated 29/10/2007 to the petitioner demanding an amount of Rs. 12,500/- with interest, which was identified as loss in the Local Fund Audit for the year 1999-2000. Ext. P3(a) is the copy of the Audit Report issued to the petitioner on his request.

2. The 5th respondent, on the basis of the demand made by the 4th respondent, initiated revenue recovery proceedings against the petitioner and, accordingly, Exts. P8, P10 and P11 demand notices were issued. The petitioner submits that the proviso to Section 215(9) of the Kerala Panchayat Raj Act, 1994 (for short, "the Act") specifically states that no surcharge shall be made after a period of four years from the period on which the expenditure incurred. But, in the instant case, surcharge is made after a period of four years from the date on which the expenditure, in question, was incurred, i.e., the expenditure, in question, was incurred on 14/01/2000. But the surcharge was made on 12/12/2004. Hence the surcharge made

against the petitioner is barred by Section 215(9) of the Act. It is with these averments this writ petition has been filed with a prayer to declare that the demand under Exts. P8, P10 and P11 is time barred and to quash the same.

3. Heard the learned counsel for the petitioner, the learned counsel appearing for the 3rd respondent and the learned Government Pleader.

4. In view of the rival pleas and the submissions made at the Bar by the concerned counsel, the question to be considered is, whether the surcharge made against the officer or authorities of the Panchayat under Section 215(9) of the Act, after four years, can be realised by resorting to proceedings under the Revenue Recovery Act.

5. But, according to the proviso to sub-section (9) of Section 215 of the Act, no surcharge under Section 9 shall be made after a period of four years from the date on which the expenditure, in question, was incurred. Indisputably, if the basic pecuniary claim is a time barred one, the amount allegedly due under such claim cannot be recovered by resorting to proceedings under the Revenue Recovery Act. Legally recoverable amount alone can be recovered by resorting to revenue recovery proceedings.

6. It stands admitted that the petitioner retired on superannuation from the service of the 1st respondent as Junior Superintendent on 13.11.2004 while working in Perinadu Grama Panchayat. On 29/10/2007, after the retirement, he received a letter from the 4th respondent stating that he has to remit an amount of Rs. 12,500/- with interest within 14 days from the date of receipt of notice. The reasons stated was that in the Local Fund Audit Report, it was found that the petitioner had caused a loss of Rs. 12,500/- during 1999-2000, while working as the Secretary of Kumbalam Grama Panchayat by Ext. P1. According to the petitioner, he has not received any communication prior to Ext. P1 dated 29.10.2007 and in such circumstance, he preferred Ext. P2 reply requesting to issue a copy of the audit report mentioned in Ext. P1 and the 4th respondent issued Ext. P3(a) relevant portion of the audit report under which surcharge was made against the petitioner.

7. Going by Ext. P3(a), it is seen that the allegation is that even though Rs. 5 lakhs had been withdrawn from the account of the Panchayat for depositing in the Kerala State Housing Board for the Scheme in Mythri Bhavana Padthathi, only Rs. 4,87,500/- was seen deposited on 14.01.2000. Even though it is recorded that the balance amount of Rs. 12,500/- is remitted in the impressed account, that amount does not seem to be remitted. Thus, admittedly, the expenditure, in question, was incurred on 14.01.2000, going by Ext. R3(4), it is seen that the said expenditure incurred on 14.01.2000 was found out, and quantified on 02.12.2004, to the Kumbalam Grama Panchayat. Further, going by Ext. R3(2), the letter sent by the Head Clerk to the Secretary, Kumbalam Grama Panchayat, it is seen that the deficit amount was brought to the notice of the concerned Head Clerk only on 27.02.2008.

8. According to sub-section (9) of Section 215 of the Act, the auditors shall, after giving a reasonable opportunity to the person concerned to explain his case, disallow every item of expenditure incurred contrary to law and surcharge the same on the person incurring, or authorising the incurring of, such expenditure and may charge against any person responsible therefore the amount of any deficiency, loss or unprofitable outlay occasioned by the negligence or misconduct of that person or of any sum which ought to have been but is not brought into account by that person and shall, in very such case, certify the amount due from such person.

9. Here, the date of Ext. R3(4) letter sent by the Deputy Director to the President, Kumbalam Grama Panchayat can be taken as the date on which the surcharge was made to the petitioner. Ext. R3(4) letter is dated 02.12.2004. The relevant date on which expenditure incurred was 14.01.2000. Thus, the surcharge was made to the petitioner after four years. So, as per Section 215(9) of the Act, the surcharge is a time barred one and no amount can be realised from the petitioner as per this provision.

10. That apart, going by Ext. R3(2) letter sent by the Head Clerk to the Secretary, Kumbalam Grama Panchayat, it is seen that on receipt of the Audit Report, she made a verification with the bank passbook of the Panchayat and found out that an amount of Rs. 36,285/- which was deposited in the bank on 26.04.2000 includes the above said missing amount of Rs. 12,500/- which was claimed against the petitioner. She also confessed that this explanation was not given to the Audit party.

11. In the above analysis, I find that the demand made against the petitioner under Exts. P1 and P7 is a time barred claim under Section 215(9) of the Act. If the basic claim is a time barred one, the amount under such claim cannot be realised under the revenue recovery proceedings. In the above view, Exts. P1, P5, P7, P8, P10 and P11 are quashed.

12. This writ petition is allowed.