A. DAMODARAN & ANR.

v.

STATE OF KERALA & ORS.

March 23, 1976

[A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

Kerala Abkari Act (1 *of* 1967), *Ss.* 18*A and* 28—*'Grantee', who is—Right of Government to recover dues from persons who were permitted to carry on business of selling liquor even though no agreements were executed or licences granted.*

Section 18A(1) of the Kerala Abkari Act, 1967, shows that the exclusive or other privilege of selling liquor by retail may be granted on payment of rental in consideration of the grant. The amount of rental may be settled by auction, negotiation or by any other method. Section 28 provides that all amounts due to the Government by any *grantee of a privilege* may be recovered from the person primarily liable to pay as if they were arrears of land revenue.

The appellants bid at auction sales of some toddy shops. The conditions of the sales, notified in pursuance of the statutory provisions, were : (a) It was incumbent upon the bidder to pay immediately 10% of the amount due; (b) The successful bidder had to deposit 30% of the amount payable, on demand by the Assistant Commissioner, and to execute agreements before getting the necessary licences; and (c) If the contract could not be executed, the whole amount was to be forfeited and the shop itself was to be resold. The appellants deposited the necessary amounts on demand and were allowed to start business even before agreements were executed or licences were issued. But the appellants failed to pay the balance due to the State. The amounts were sought to be recovered under s. 28, and the proceedings were challenged, but the High Court held against the appellants.

In appeal to this Court, the appellants contended that as no agreement was executed between the appellants and the Government in the manner prescribed by Art. 299 of the Constitution, the appellants had not become the 'grantees' of any privilege and hence were not liable to pay the amounts sought to be recovered.

Dismissing the appeal,

HELD : The Government had to perform its duty of granting licences as soon as the appellants fulfilled the conditions by paying up the remainder of the amounts due. In the present case, Government had performed its part by allowing the appellants to start selling liquor even before execution of the agreements and the grant of licences. The appellants, therefore, became liable and bound to perform their corresponding obligations. This reciprocity of obligations, quite apart from its basis in agreement, had thus acquired an operative force resting on statutory sanction and equity. [784G—785B]

(1) It is not a condition precedent to recovery of an amount due and recoverable under the Act that it should be due under a formally drawn up and executed contract. Under the notification, in the event of the non-execution of a contract, even if due to the unwillingness or inability of a bidder to pay, the whole amount due could be forfeited. [782C; 783E—F]

2(a) The acquisition of the status of a grantee for the purpose of s. 18A, does not depend on the actual receipt of a licence. Section 18A(2) lays down that no grantee of any privilege under sub-s. (1) shall exercise it until he has received a licence. This provision contemplates the statutory status of a 'grantee' even before the successful bidder becomes entitled, as of right, to exercise the privileges of a grantee on receipt of a licence Even before he receives his licence he is described as a grantee. [783F—G, H—784A]

(b) The word 'grantee' used in s. 28 carries this wider connotation of persons who have been permitted by the excise authorities, in recognition of their rights to receive and in anticipation of the receipt of licences, to exercise the privileges of grantees, and not necessarily only those who have executed the written contracts nd received licences. [784A—C] A

Madhavan v. *Assistant Excise Commissioner, Palghat* I.L.R. [1969] 2 Kerala 71, approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1464 of 1971. B

From the Judgment and Order dated 18-3-71 of the Kerala High Court in Writ Appeal No. 126 of 1971.

K. K. Sudhakaran .and N. Sudhakaran and *P. K. Pillai* for the Appellants.

K. T. Harindranath and *K. M. K. Nair* for Respondent. C

The Judgment of the Court was delivered by

BEG, J.—The appellants before us, by certification of the case, had filed a petition to quash revenue recovery proceedings started against them for realisation of the remainder of the amounts due on account of their bids at auction sales of some toddy shops for the period 1st April, 1967, to 31st March, 1969, by the Government of Kerala. The amounts at which the shops were knocked down were : D

1. Shop No. 1	=	84,000/-
2. Shop No. 4	=	46,500/-
3. Shop No. 8	=	56,100/-
4. Shop No. 11	=	1,50,000/-.

E

The notified conditions of the auction sales made it incumbent upon the bidder to pay immediately 10% of the amount due and to provide personal security for the rest. There was no assurance or guarantee given there that prohibition will not be removed in future by the Government in any area in the State or about any other matter of future policy of the Government relating to intoxicants. According to notified conditions, the successful bidders had to deposit 30% of the total amount payable on demand by the Assistant Commissioner and also to execute agreements before getting the necessary licences. The petitioners had deposited the necessary amounts on demand. They were also allowed to start the business of running their toddy shops even before the licences were issued in their favour. F

G

The petitioners' case is that, at the time of bidding, there was an understanding that the respondent State will not remove prohibition so that they expected adequate profits. As observed above, there is nothing in the notified conditions to indicate this. It appears that in April, 1967, the respondent State announced removal of prohibition from 1st May, 1967. The appellants allege that they suffered heavy losses due to this policy of the State and were unable to make the remainder of the payments which were sought to be recovered under section 28 of the Abkari Act (hereinafter referred to as 'the Act'). It is difficult to see what the removal of prohibition had to do with alleged H

A losses to the appellants. Abandonment of Prohibition either totally or partially, should, ordinarily, not diminish sales of liquor. One should expect such a development to increase sales of liquor.

The appellants contend that, as no agreement was executed between them and the Govt. in the manner prescribed by Article 299 of the Constitution, they are not liable to pay the amounts sought to be B recovered. This is their main contention.

A learned Judge of the Kerala High Court who heard the petition held that the notification in persuance of which the shops in question were auctioned provided that, if the contract could not be executed, the whole amount was to be forfeited and the shop itself was to be resold. Thus, non-execution of the contract due to the unwillingness C or inability of a bidder to pay was not a contingency outside the notification for auction the validity of which is not challenged. The notification did not lay down that, in that case, the payment of the remainder will be remitted. On the other hand, the condition was that the whole amount due could, in such an event, be "forfeited".

The Kerala High Court held that, despite the absence of a contract D executed in accordance with the provisions of Article 299 of the Constitution, the amounts due could be recovered under Section 28 of the Act which reads as follows :

> "28 Recovery of duties.—All duties, taxes, fines and fees payable to the Government direct under any of the foregoing provisions of this Act or of any licence or permit issued under it, and all amounts due to the Government by any grantee E of a privilege or by any farmer under this Act or by any person on account of any contract relating to the Abkari Revenue may be recovered from the person primarily liable to pay the same or from his surety (if any) as if they were arrears of Land Revenue, and, in case of default made by a grantee of a privilege or by a farmer the Commissioner may take grant or farm under management at the risk of the defaul- F ter or may declare the grant or farm forfeited, and re-sell it at the risk and loss of the defaulter. When a grant or farm is under management under this section, the Commissioner may recover any moneys due to the defaulter by any lessee or assignee as if they were arrears of Land Revenue."

The appellants submit that they had not become "grantee" of any G privilege without the execution of contracts complying with the requirements of Article 299 of the Constitution. The learned Judge of the Kerala High Court relied on *Madhavan* v. *Assistant Excise Commissioner, Palghat*(1), affirmed by a Division Bench in *Damodaran* v. *State of Kerala*(2). It appears that, although the Division Bench did not specifically consider whether a bidder at an auction of the kind before us was the "grantee" of a privilege within the meaning of H Section 26 of the Act, yet, it held that the liability to satisfy the dues arising out of a bid was enforceable under Section 28 of the Act quite

(1) I.L. R. [1969] (2) Kerala 71. (2) (1969) Kerala Law Times 587.

apart from any contractual liability. Reference was also made, in this connection, to the decision of this Court in *Union of India* v. *A. L. Ralia Ram* (1), for contending that the absence of a formal contract is not fatal in all cases so as to make the whole transaction null and void *ab initio*.

Statutory duties and liabilities may be enforced in accordance with statutory provisions. Equitable obligations may also arise and be enforced by decrees of Courts quite apart from the requirements of article 299 of the Constitution. *Mulamchand* v. *State of Madhya Pradesh*(2) affords an instance where on a claim for compensation or restitution under Section 70 of the Contract Act, this Court relied upon the principle stated, in *Nelson* v. *Harbolt*(3) as follows (at p. 222) :

> "It is no longer appropriate to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to convass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular framework. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the Court orders restitution if the justice of the case so requires".

In the case before us, we are concerned really with the legality of proceedings under Section 28 quoted above of the Act. It is evident that these proceedings can be taken in respect of "all amounts due to the Government by any grantee of a privilege or by any farmer under this Act or by any person on account of any contract relating to the Abkari Revenue". It is clear that dues may also be "recovered from the person primarily liable to pay the same or from his surety (if any)". It is not a condition precedent to recovery of an amount due and recoverable that it should be due under a formally drawn up and executed contract.

Section 18 of the Act shows that the exclusive or other privilege of selling liquor by retail may be granted on payment of rental in in consideration of the grant. The appellants made all the initial payments of rent. We do not think that acquisition of the status of a grantee, for the purposes of Section 18A, need await the actual receipt of a licence. The conditions of the grant are to be laid down by the Government. The amount of rental "may be settled by auction, negotiation or by any other method as may be determined by by the Government, from time to time". The amounts due "may be collected to the exclusion of, or in addition to, the duty or tax leviable under Sections 17 and 18.

Section 18A(2) lays down that "no grantee of any privilege made sub-section (1) shall exercise the same until he has received a licence in that behalf from the Commissioner". It will be seen that this provision contemplates the statutory status of a "grantee" even before

(1) A.I.R. [1963] S.C. 1685. (2) [1968] 3 S.C.R. 214.
(3) [1948] 1 K.B. 30.

A he becomes entitled, as of right, to exercise the privileges of a grantee on the receipt of a licence. What is noticeable is that even before he receives his licence he is described as a "grantee". The successful bidders, in the case before us, had been permitted by the excise authorities, in recognition of their rights to receive and in anticipation of receipt of licences, to exercise the privileges of grantees. They were thus treated as grantees in anticipation of execution of contracts B and grants of licences. Grantees under Section 29 of the Act are those who have received the privilege and not necessarily only those who have received the written contracts and licences. The word "grantee" used there seems to us to carry this wider connotation with it.

C In *Madhavan's* case (supra) K. K. Mathew, J., repelled the contention that the execution of an agreement in accordance with the provisions of Article 299 of the Constitution was a condition precedent to the creation of a liability to be proceeded against under Section 28 of the Act for recovery of the balance of the rentals due. He said (at p. 94):

> D "It was contended on behalf of the petitioners in some of these cases that no agreements were executed by them, and therefore, the Government are not entitled to recover any amount by way of rental. Reliance was placed upon the decisions of the Supreme Court in *H. P. Chowdhry* v. *State of M.P.* (AIR 1967 SC 203) and *Mulamchand* v. *State of M.P.* (1969(II) S.C.W.R. E 397), for the proposition that unless there is an agreement executed in accordance with the provisions of Article 299 of the Constitution, the petitioners in the case where no agreements have been executed, would not be liable to pay rental. The argument was that the liability to pay rental arises only out of the agreement, and if there is no agreement, then there is no liability to be enforced. As I have F indicated the liability to pay the rental arises not only by virtue of the agreement but also by the provisions of section 28 of the Act. The decision of the Supreme Court in *H. P. Chowdhry* v. *State of M.P.* would make it clear that if there are provisions in the Act, the liability to pay the rental can be enforced. I think that even if no agreement has been executed, there was the liability under section 28 of the Act, G and that the liability could be enforced under the provisions of the Revenue Recovery Act. (See Sections 6 and 62 of the T.C.Act)".

The appellants became entitled to get licences from the Government which had to perform its duty to execute written agreements and grant licences as soon as the appellants fulfilled required conditions H by paying up the remainder of the amounts due. The Government had performed its part of the bargain and even allowed the appellants to start selling liquor. The appellants also became liable and bound to perform their corresponding obligations under the

conditions of the auctions imposed in pursuance of statutory provisions. This reciprocity of obligations, quite apart from its basis in agreement, had thus acquired an operative force resting on statutory sanction and equity. A

Consequently, we affirm the view of the Kerala High Court and dismiss this appeal. B

Parties will bear their own costs throughout.

V.P.S. *Appeal dismissed.*