

## KERALA HIGH COURT

T.V. Subhadra Amma

Vs

Kerala Board of Revenue

O.P. No.1783 of 1981

(G. Balagangadharan Nair, J.)

05.05.1981

### ORDER

#### **G. Balagangadharan Nair, J.**

1. The sale of the right to run Toddy Shop No.1, Kootumgal, Shertallai Range for the year 1981-82 was fixed for Mar. 24, 1981, Before the auction the petitioner who was licensee of the shop for the year 1980-81 submitted a tender for Rupees 60,000/- with all the prescribed documents including a Bank draft for Rs. 6,000/- from the Dhanalakshmi Bank Ltd. Respondent 4 submitted a tender for Rs. 60,100/- and the tender was accompanied by two pay orders of which Exts. R1 and R1(a) are the copies for Rs. 4,500/- and Rs. 2,000/- issued by the Alleppey Branch of the Bank of Cochin Limited in favour of the 3rd respondent, the Assistant Excise Commissioner, Alleppey, The tenders and other records were submitted before the 2nd respondent, the District Collector, Alleppey who was the Auctioning Officer. The demand draft given by the petitioner and the pay orders given by respondent 4 represented amounts not less than 10 per cent of the tendered amount as mentioned by Rule 5A of the Abkari Shops (Disposal by Auction) Rules. Respondent 2 rejected the tender of respondent 4 as it was accompanied by pay orders and not by demand draft as required by Rule 5A and provisionally accepted the petitioner's tender. The petitioner thereupon deposited a security of 30 per cent of the tender amount under Exts. P1 and P2 and executed a temporary agreement in terms of the rules. Respondent 4 thereupon filed a petition before the 1st respondent, the Board of Revenue. By its decision dt. Apr. 1, 1981 the Board of Revenue set aside the order of respondent 2 and accepted the tender of respondent 4. Respondent 3 thereupon sent to the petitioner a communication Ext. P3 dt. Apr. 2, 1981 intimating her the decision of the Revenue Board and asking her to get her security released. On Apr. 3, 1981 respondent 4 remitted the necessary amount and executed the required agreement. The petitioner has filed the Original Petition challenging the decision of the Board of Revenue on a number of grounds. She complains that as respondent 2 was alone competent to accept her tender it was not open to the Board of Revenue or any other authority to revoke the acceptance of her tender. It is alleged that the Rules vest no reserve or supervisory power in the Revenue Board in this regard and that its action was completely void. She further alleges that even if the Board of Revenue had any power it should have rejected the tender of respondent 4 as invalid, as was done by respondent 2, because it was accompanied only by pay orders and not a demand draft in

terms of Rule 5A. The petitioner also contends that the Revenue Board has violated the rules of natural justice in that it passed the impugned decision without hearing her or even without issuing her a notice.

2. Respondent 4 has filed a counter-affidavit seeking to meet those contentions.

3. The three contentions raised by counsel for the petitioner are that in terms of Rule 5A, respondent 2 was right in rejecting the tender of respondent 4, that the Revenue Board was wrong in taking a contrary view, that it acted without jurisdiction in purporting to interfere with the acceptance of the petitioner's tender as it has no power to do so and that even if it has the power it erred in exercising the power without notice to the petitioner.

4. The first contention turns upon the question whether a pay order satisfies the requirements of Rule 5A. Rule 5A which was added to the A.S.D.A. Rules by an amendment dt. Mar. 7, 1981 lays down so far as material, that before the commencement of the sale of each shop, the Officer conducting the sale shall also invite tenders, and that the tenders which should be in Form VI should be accompanied by a demand draft for an amount not less than 10 per cent of the tendered amount. Counsel for the petitioner drew my attention to Section 85A of the Negotiable Instruments Act which defines a draft as an order to pay money, drawn by one office of a bank upon another office of the same Bank for a sum of money payable to order on demand. He submitted that an order to pay money drawn by one office of a Bank upon an office of a different Bank would also be a draft, although it is really a cheque as explained in In the matter of Palai Central Bank Ltd., AIR 1962 Kerala 210. He contended that Exts. R1 and R1(a) produced by respondent 4 are not demand drafts of either of these categories and that even if they have some, features analogous to demand drafts they would not satisfy the mandatory terms of Rule 5A. Ext. R1 which is headed "Pay Order" reads :

"Pay Asst. Excise Commissioner, Alleppey or Order Rupees Four Thousand Five hundred only being request from V.V. Parameswaran." (V.V. Parameswaran is respondent 4). Ext. R1(a) is in the same terms except that it is for Rs. 2,000/-. Exts. R1 and R1 (a) are orders issued by the Alleppey Branch of the Bank of Cochin Limited directing payment of the amounts specified to respondent 3 or his order. They are not orders issued by the Alleppey Branch of the Bank upon another branch or upon a branch of a different Bank. Counsel is therefore right in saying that they are not in terms demand drafts, as defined in Section 85A or as generally called. It however appears to me that they are as efficacious as drafts for a purpose like this. If respondent 4 had submitted a demand draft issued by the Alleppey Branch of the Bank of Cochin drawn upon another of its branches or upon a branch of another Bank it would have satisfied Rule 5A and it would have been beyond exception, even on the argument of counsel for the petitioner. Exts. R1 and R1 (a) are orders upon itself to pay the amount to the 3rd respondent and it is difficult to see how between the Bank and the payee they could be less effective than a demand draft. As for the legal incidents of pay orders the following statement in Cheques in Law and Practice, 3rd Edition by M.S. Parthasarathy, pages 486-487 which was the only authority brought to my notice is worth reproducing :

"A pay order is akin to the banker's draft but with the difference that it is issued by, and drawn on, the same office of the bank. Pay orders are frequently obtained by customers for making payments to Government departments. The Bank cheques in Australia are perhaps in the same class as pay orders.

Pay orders are paid, and collected by, banks in the same way as cheques are. It is however to be noted that pay orders are not covered by Sections 85A and 131A of the N.I. Act since they are not bankers' drafts. The definition of a banker's draft given in Section 85A (which is referred to in Section 131-A) requires that it should be drawn by one office of a bank upon another office of the same Bank. Hence, it would appear that the banker will not be protected in paying such an order with a forged endorsement. The collecting banker also will not be able to claim protection under Section 131 of the N.I. Act while collecting such orders."

The passage shows that pay orders are unknown phenomena but are documents akin to banker's drafts in current frequently obtained by customers for making payments to Government departments. That is the very purpose for which Exts. R1 and R1(a) were obtained by respondent 4. Pay orders, as the extract from Parthasarathy shows, are paid and collected by banks in the same way as cheques are. And AIR 1962 Kerala 210 explains that drafts outside Section 85A are really cheques, although ordinarily called drafts. There is therefore hardly any distinction for our purposes between a pay order and a demand draft. The question of protection on payment of the amount on a forged endorsement or by a collecting banker under Section 131, N.I. Act, points noted in Parthasarathy do not arise as no such situation exists here. The Government Pleader had also no complaint about the efficacy of Exts. R1 and R1(a). This is of significance, for, the object of the Rules is to safeguard public revenues and not to arm a private party like the petitioner with a weapon of offence. Pay orders in such a situation as in this case, are as effective as demand drafts and the pay orders submitted by respondent 4 with his tender constitute sufficient compliance with the requirements of Rule 5A.

5. Chapter IV of the A.S.D.A. Rules deals with general conditions applicable to sale of Abkari Shops. Before its amendment the Chapter consisted of one rule, R. 5 divided into 22 sub-rules. The mode of disposal of Abkari Shops as prescribed :-

"No sale shall be deemed final against the Government, unless confirmed by the Board of Revenue, who shall be at liberty to accept or reject any bid for valid reason to be recorded in writing."

If this sub-rule applies to the disposal by tender which happened in this case, the petitioner's tender although accepted by respondent 2, would become final as against the Government if only it was confirmed by the Revenue Board and the Revenue Board was within its power in cancelling the tender of the petitioner and accepting the tender of respondent 4. But counsel for the petitioner contended that Rule 5A is a self-contained Rule which vested the power of acceptance in the Auctioning Officer as appears from the provision "The open bid amount or the tender amount, whichever is higher, shall be accepted, unless rejected for reasons to be recorded by the Auctioning Officer." that this excludes the provisions of Rule 5(13) and that the binding

nature of the action of the Auctioning Officer is not conditional upon its confirmation by the Revenue Board. It was also argued that Rule 5A to this extent repeals the relevant provisions of Rule 5 and that the Revenue Board has therefore no power to set aside the Collector's order. I am unable to accept these contentions. Rule 5A and the provisions introduced by the amendment do not purport to repeal the provisions of Rule 5 but only to supplement them, nor have they the effect of repealing Rule 5 by implication. "Auction" is one mode of disposal by "sale". The amendment which has added "tender" as a means of disposal introduced a definition in Clause (da) defining "auction" as including invitation and acceptance of tender also. The other material provisions of Rule 5 like sub- r.(10) apply to tenders and the petitioner herself has admittedly complied with them. There being nothing repugnant in the context, this new definition has to be read into Rule 5(13) and so read there can be no doubt that sale by auction or by tender will fall within its mischief. Rule 5A itself provides for a composite procedure: invitation of tenders before calling for open bids and thereafter acceptance of the open bid or the tender whichever is higher. It is impossible to segregate Rule 5A from Rule 5 which contains the general provisions for the disposal of Abkari Shops. Auction sale within Rule 5A will be covered by Rule 5(13) and there is no reason why what is applicable to auction should be inapplicable to tender, for tender is only another means of selling the Abkari Shops. The object of Rule 5(13) is obviously to vest a high authority like the Revenue Board with the power to monitor the disposal of Abkari Shops as they constitute a major source of the State's revenue. It cannot be that the object ceases to be relevant where disposal of the shop is by tender and not by auction. The terms of the Rules and the object of Rule 5(13) both combine to show that a sale by tender is also subject to the provisions of Rule 5 (13). The Revenue Board was therefore within its powers in refusing to confirm the petitioner's tender and in accepting the tender of respondent 4.

6. The disposal of the right to sell liquor whether by auction or tender is a continuous process, starting with the disposal by the Auctioning Officer and ending with its confirmation or refusal by the Revenue Board. The acceptance of the tender or bid by the Auctioning Officer is provisional and becomes final only when the Revenue Board passes its order. The petitioner herself must have been aware of this position for she executed only a temporary agreement after the Collector accepted her tender in terms of Rule 5(10). The act of the Revenue Board in confirming or vacating the sale is thus a stage in the process of disposal of Abkari Shops and I do not think that the Revenue Board is bound to notify the person affected before it passes the final order. The omission to give notice to the petitioner does not vitiate the decision of the Revenue Board. I dismiss the Original Petition, but in the circumstances without any order as to costs. Petition dismissed.