

Davis Vs. State of Kerala

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Court : Kerala

Decided On : Mar-11-1993

Reported in : (1993)IILLJ565Ker

Judge : Krishnamoorthy, J.

Acts : Kerala Abkari Worker's Welfare Fund Act, 1989 - Sections 11(5)

Appeal No. : O.P. No. 3389/1993

Appellant : Davis

Respondent : State of Kerala

Advocate for Def. : K.K. Babu, Adv.

Advocate for Pet/Ap. : M.V. Joseph, Adv.

Disposition : Petition allowed

Judgement :

Krishnamoorthy, J.

1. I heard counsel for the petitioner, Government Pleader on behalf of respondents 1 and 2 and Sri K.K. Babu, counsel for the 2nd respondent.

2. Petitioner is challenging Ext. P5 order of the 3rd respondent by which he dismissed an application for stay pending appeal on the ground that there is no power of stay under the Act for an appellate authority.

3. Petitioner is an Abkari contractor and Ext. P1 order was passed by the 2nd respondent, Welfare Fund Inspector, determining the amount of contribution payable by the petitioner. Against the above order, under Section 11(5) of the Kerala Abkari Workers' Welfare Fund Act the petitioner filed an appeal Ext. P2 before the 3rd respondent. Along with the appeal the petitioner filed an application for stay Ext. P3, supported by an affidavit Ext. P4 dated March 6, 1993. The stay petition was dismissed by the 3rd respondent by Ext. P5 order on the following ground:-

'But since the appellate authority has not been conferred with powers of stay under the Act, the application filed by the appellant for staying the operation of the order of the Welfare Fund Inspector, Ernakulam is not allowed'.

It is this order that is challenged by the petitioner.

4. Under the Kerala Abkari Workers' Welfare Fund Act an appeal is provided for under Section 11(5) by any person aggrieved by an order under Sub-section (1) of that Section to the Government or any authority as may be specified. It is admitted that the 3rd respondent has been conferred with the power of an appellate authority. The stay petition was dismissed by the 3rd respondent on the ground that the Act does not confer on him a power of stay pending appeal.

5. But it is to be noted that there is no provision in the Act or in the Rules restricting in any way the power of stay of the appellate authority. It is well-settled that when jurisdiction is conferred on an authority, he will be entitled to exercise all interlocutory powers which are necessary to exercise the jurisdiction vested in him. In that view of the matter, the appellate authority has inherent power to pass interlocutory orders during the pendency of an appeal to safeguard the interest of the parties unless there is any restriction of that right by the statute or the rules. In *I.T. Officer v. Mohd. Kunhi* (AIR 1969 SC 430) the question arose as to whether the Appellate Tribunal under the Income Tax Act has power to grant stay as

incidental or ancillary to its appellate jurisdiction though no such specific power was granted under the Act to the Tribunal. In that context the Supreme Court observed:-

'The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the appellate tribunal. Indeed the tribunal has been given very wide powers under Section 254(1) for it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the Income-tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties raising very large demands and if the appellate tribunal is entirely helpless in the matter of stay of recovery the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the legislature should have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion.....It is firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland Statutory Construction, Third Edition, Articles 5401 and 5402). The powers which have been conferred by S. 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective. In Domat's Civil Law, Cushing's edition, Vol-I at page 88, it has been stated:

'It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it'. Maxwell on Interpretation of Statutes, Eleventh Edition, contains a statement at p.35p that 'where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. Cui Jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potuit'. An instance is given based on Ex. Parte, Martin, (1879) 4 QBD 212 at p. 491 that 'where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the

enactment, for the power would be useless if it could not be enforced'.

The Supreme Court held that the power of stay is inherent in an appellate authority and the mere fact that no such power is expressly conferred by the statute is no ground to say that they have no power. But it may be another matter as to whether stay should be granted in a particular case or not which will depend on the facts of each case.

6. In the light of the above, I hold that the view taken by the 3rd respondent that he has no power to grant a stay is incorrect. Accordingly I set aside Ext. P5 order of the 3rd respondent and direct him to consider Ext. P3 application for stay in accordance with law.

7. The Original Petition is allowed as indicated above. Issue photo copies on usual terms today itself.

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