

# ANDHRA LEGAL DECISIONS

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## A CRITICAL NOTE ON THE DECISION IN NANDYAL MUNICIPAL COUNCIL, NANDYAL V. N.M.D. ISMAIL, REPORTED IN 2000 (2) ALD 281

By

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1. In the above decision, His Lordship Honourable Sri *V.V.S. Rao*, J, held that a suit for recovery of arrears of 'market fees' which is filed beyond 3 years after due date is not barred by time.

2. The Honourable Judge considered the effect of Section 365 of the A.P. Municipalities Act, 1965 and held that bar of limitation does not come in even if the suit is filed beyond 3 years after the due date.

3. It is to be noted in the first instance that arrears of taxes and other amounts payable to the Municipality by virtue of the Act or any bye-law are entirely different from the amounts payable to the Municipality by any party under a contract. The former is a statutory liability and the latter is a contractual one. In the above case, the question was with regard to arrears of market fees which was not paid by the contractor within three years. The suit was filed beyond 3 years by the concerned Municipality. The learned District Munsif rejected the plaint on the ground that the suit is not filed within 3 years. The High Court after considering the effect of Section 365 of the Act held that the suit can be filed beyond 3 years.

4. In my considered opinion, the above view taken by the learned Judge is not correct. Market fees is payable to the Municipality under a contract between the Municipality and the Market Contractor. Section 277 of the Act empowers the

Municipality to collect Market Fees. The mode in which the Municipalities are leasing out the markets and are collecting this market fees is well known. They lease out the market for one year 'under a contract' to a particular person called the Contractor and that person has to pay the total contract amount and expenses in 12 equal monthly instalments. Thus, the market fees is an amount payable under a contract but not one payable under the Act. As such it is not a statutory liability for computing limitation period as per Section 365 of the Act.

5. Previously even water tax was not an amount payable under the Act and depending on the previous 1920 Act, our High Court held in 1964 (1) Andhra Weekly Reporter Page 108 (D.B) that charges for supply of water are not a tax and that payment of water charges is only a contractual obligation. But now the position is different under the present Act even with regard to water charges, drainage charges *etc.*, enumerated in Section 364 of the Act.

6. The question now under discussion has been discussed previously by the Madras High Court as well as our High Court. The words "amount due under the Act" was interpreted while considering exactly similar provisions of the Madras Local Boards Act and in AIR 1943 Madras Page 754 it was held that rent due from a lessee to the District Board is due solely under a contract and that does not form payment of amount which is fixed or payable under the Act.

Therefore as early as in 1943 itself this was the view taken. Further, the lease amount due under leases cannot be equated to the amounts due under Rule-11 (1) and (2) of Schedule IX of the Act. Therefore lease amounts do not form part of the amounts due under the Act.

7. This question was considered at length in Vijayawada Municipality case. His Lordships Honourable Sri V.V.S. Rao, J. referred to this case by relying upon 1977 APHN 250. The full report for this case is available in 1977 (2) APLJ 364 = 1977 ALT 598 = 1978 (1) AnWR 346. His Lordship Honourable Mr. Jeevan Reddi, J (as he then was) of the Division Bench interpreted the words “amount due under the Act” and also considered the effect of Rule 11 of Schedule IX. After giving the reasoning contained in paragraph 15 of the judgment, His Lordship Honourable Mr. Jeevan Reddi, J., held that suits for recovery of lease amount are governed by ordinary law of limitation only and not by the Municipalities Act.

8. This question was again considered in subsequent cases by our High Court. In Yemmiganur Municipality case which is reported in 1990 (2) ALT 169 = 1990 (2) L.S. 302 = 1990 (1) APLJ 54 NRC = 1990 (1) Andhra Weekly Reporter 28, NRC a prosecution was launched for non-payment of kist amount of sheep market and penal interest. This was payable under a contract. The High Court observed in this case that any amount due under a contract in respect of water supply or drainage Act only can be said as an amount due under the Act. Insofar as amounts relating to contracts other than in regard to water supply or drainage are concerned, they cannot be said to be amounts due under the Act since the amount is due under other contracts and therefore they cannot be recovered by the Municipality by depending upon Section 364 of the Act. In this Yemmiganur case our High Court

relied upon the earlier Division Bench judgment in the Vijayawada Municipality case and held that the amount claimed as kist amount and interest was barred by time and as such quashed the criminal complaint.

9. In another case of Palakole Municipality decided by His Lordship Honourable Sri B. Sudarshan Reddi, J., and reported in 1998 (2) An.WR 42, the Court followed the principles laid down in the Vijayawada Municipality case. In this Palakole Municipality case, the amounts claimed are due in respect of Saturday Market and rents of a daily market. After referring to the Vijayawada Municipality case and the Yemmiganur case, His Lordship Honourable Sri Sudarshan Reddi, J held:

“But amount due to Municipality under any other contract cannot be recovered by the Municipality by invoking the power under Section 364 of the Act following the procedure prescribed thereunder.”

10. Section 364 of the Act itself reads as follows:-

Section 364 : “Recovery of sum due as taxes :- All costs, damages, penalties, compensation charges, fees, other than school fees, expenses, rents contributions and other sums which under this Act or any other law or rules or bye-laws made thereunder or under any contract in respect of water supply or drainage, made in accordance with this Act, the rules or bye-laws, are done by any person to the Council, may, if there is no special provision in this Act for their recovery be demanded by bill as provided in the rules in Schedule II and recovered in the manner provided therein.”

11. From the above discussion and from the above Division Bench judgment which decided the Vijayawada Municipality case

and the two subsequent decisions of our High Court in Yemmiganuru Municipality and Palakole Municipality which seem to be clear, the reasoning in the case under discussion by His Lordship Honourable Sri V.V.S. Rao, J, is not correct in my view and it also appears to '*per incuriam*', because the earlier decision in the Vijayawada Municipality case was decided by a Bench.

12. In the decision under discussion, a reference is made to another earlier Division Bench decision of His Lordship Honourable

Sri *Jeevan Reddy* J, reported in 1977 (2) APLJ 272. But this is a case of surcharging a Sarpanch for defalcation of funds of Panchayat. In that case the suit was based upon an audit report and Surcharge Certificate issued by the Audit Department. That is not a case of house tax or any amount due under a contract.

13. Therefore, I am of the opinion that the above ruling in 2002 (2) ALD P281 is not correct and that it is necessary to settle the law by a larger Bench.

### CHILD LABOUR : THE ERITREAN SCENARIO

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The child place is home and second home is the school. It is the prophecy in some sacred books "child is the incarnation of God" and such child should not be put to work at such age. It is the age of learning and not earning. This paper is concerning Child Labour in Eritrea which highlight few causes of child labour and an attempt is made to highlight certain issues with their remedies which would be a beginning or first step to stir-up of issues involved regarding such evil.

In Eritrea generally persons who are under the age of 18 years are divided into two categories. Under the first category falls those who are under the age of 14 and under the second category fall those who are between the ages of 14 to 18 years. The first category is generally what we call children and according the proclamation No. 8/91 (An amended Labour Code under Eritrean Labour Proclamation No. 118/2001 has been enacted on of November 15, 2001 repealing Labour Proclamation No. 8/1991),

the employment of these children is prohibited. The second category is called "young persons" who according to the proclamation can be engaged in light works that is not dangerous to their health."

There are many causes of child labour problems like poverty (root cause of child labour), a big family, drop out of school, social attitude, structure of labour market, divorce *etc.*, In divorce, the children deprive of parent love and affection which affects them morally and leave their home and quit school and try to earn themselves. Such child can be abused as well as harassed by the employer either in formal sector or informal sector. When we speak of cultural, we see specially in rural areas a boy of six and seven years is herding cattle and in case of girl she is maid for her family or she may be employed in houses for doing domestic work. In capital of Eritrea, in most places it is observed that the boys are engaged in boot/shoe polishing and girl children are working in bars and hotels. Is it the age of