Captain Ganpati Singhji

Vs

The State of Ajmer and Another

Civil Appeal No. 43 of 1954

(CJI M. C. Mahajan, B. K. Mukherjea, T. L. Venkatarama Ayyar, B. Jagannath Das, Vivian Bose, S. R. Dass, N. H. Bhagwati JJ)

03.12.1954

JUDGMENT

BOSE J. -

The appellant is the Istimrardar of Kharwa. According to him, he has held a cattle fair on his estate every year for some twenty years. On 8-1-1951 the Chief Commissioner of Ajmer framed certain rules for the regulation of cattle and other fairs in the State of Ajmer. He purported to do this under sections 40 and 41 of the Ajmer Laws Regulation of 1877 (Reg. III of 1877). One of the rules required that persons desiring to hold fairs should obtain a permit from the District Magistrate. Accordingly the appellant applied for a permit. This was refused on the ground that no more permits were to be issued to private individuals. The appellant thereupon applied under article 226 of the Constitution to the Judicial Commissioner's Court at Ajmer for the issue of a writ directing the authorities concerned to permit the appellant to hold his fair as usual. He contended that his fundamental rights under the Constitution were infringed and also that the rules promulgated by the Chief Commissioner were ultra vires the Regulation under which he purported to act.

The learned Judicial Commissioner refused to issue the writ but granted leave to appeal under article 132(1) of the Constitution in the following terms :

> "I am of opinion that the question whether the regulation and the bye-laws framed thereunder amount to a reasonable restriction on the appellant's fundamental right to hold a cattle fair in his own land involves a substantial question of law as to the interpretation of the Constitution".

The leave is confined to the vires of the Regulation and the bye-laws but we allowed the appellant to attack the validity of the District Magistrate's action as well.

It is admitted that the land on which the fair is normally held belongs to the appellant. That being so, he has a fundamental right under article 19(1)(f) which can only be restricted in the manner permitted by sub-clause (5). The holding of an annual fair is an occupation or business within the meaning of article 19(1)(g), therefore, the appellant also has a fundamental right to engage in that occupation on his land provided it does not infringe any law imposing "reasonable restrictions on that right in the interests of the general public", or any law

> "relating to -

(i) the professional or technical qualifications necessary for practising..... or carrying on" the occupation or business in question. (Article 19(6) as amended in 1951).

The only law relevant here is sections 40 and 41 of Regulation III of 1877. Under section 40, the Chief Commissioner is empowered, among other things, to make rules about -

"(a) the maintenance of watch and ward, and the establishment of a proper system of conservancy and sanitation at fairs and other large public assemblies;

(b) the imposition of taxes for the purposes mentioned in clause (a) of this section on persons holding or joining any of the assemblies therein referred to;

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(e) the registration of cattle".

Section 41 provides for penalties in the following terms :

"The Chief Commissioner may, in making any rule under this Regulation, attach to the breach of it, in addition to any other consequences that would enure from such breach, a punishment, on conviction before a Magistrate, not exceeding rigorous or simple imprisonment for a month or a fine of two hundred rupees, or both".

These sections were not impugned in the argument before us nor were they attacked in the petition made to the Judicial Commissioner, so we will pass on to the rules made by the Chief Commissioner.

The first three sub-rules of Rule 1 deal permits. They prohibit the holding of a fair except under a permit issued by the District Magistrate, and the District Magistrate is enjoined to -

"satisfy himself, before issuing any permit, that the applicant is in a position to establish a proper system of conservancy, sanitation and watch and ward at the fair".

The fourth sub-rule empowers the District Magistrate to

"revoke any such permit without assigning any reasons or giving any previous notice".

When the appellant applied for a permit on 9-7-1952, the District Magistrate replied :

"It has been decided that as a matter of policy permits to hold fairs will be issued only to local bodies and not to private individuals. It is, therefore, regretted that you cannot be permitted to hold the fair and you are therefore requested to please abandon the idea".

In our opinion, the rules travel beyond the Regulation in at least two respects. The Regulation empowers the Chief Commissioner to make rules for the establishment of a system of conservancy and sanitation. He can only do this by bringing a system into existence and incorporating it in his rules so that all concerned can know what the system is and make arrangements to comply with it.

What he has done is to leave it to the District Magistrate to see that persons desiring to hold a fair are in a position "to establish a proper system of conservancy, etc." But who, according to this, is to determine what a proper system is : obviously the District Magistrate. Therefore, in effect, the rules empower the District Magistrate to make his own system and see that it is observed. But the Regulation confers this power on the Chief Commissioner and not on the District Magistrate, therefore the action of the Chief Commissioner in delegating this authority to the District Magistrate is ultra vires.

Further, under the fourth sub-rule of Rule 1 the District Magistrate is empowered to revoke a permit granted "without assigning any reasons or giving any previous notice". This absolute and arbitrary power uncontrolled by any discretion is also ultra vires. The Regulation assumes the right of persons to hold fairs, and all it requires is that those who do so should have due regard for the requirements of conservancy and sanitation; and in order that they may know just what these requirements are, the Chief Commissioner (not some lesser authority) is given the power to draw up a set of rules stating what is necessary. If they are in a position to observe these rules, they are, so far as the Regulation is concerned, entitled to hold their fair, for there is no other law restricting that right. Therefore, the Chief Commissioner cannot by Rule invest the District Magistrate with the right arbitrarily to prohibit that which the law and the Constitution, not only allow, but guarantee.

As these sub-rules of Rule 1 are ultra vires, the District Magistrate's order, which in effect prohibits the holding of the fair, is also bad for, without the aid of these rules or of some other law validly empowering him to impose the ban, he has no power in himself to do it. The matter is covered by the decision of this Court in Tahir Hussain v. District Board, Muzafarnagar (A.I.R. 1954 S.C. 630).

The appeal is allowed and the order of the Judicial Commissioner is set aside. We declare that the rules are void to the extent indicated above and we quash the order of the District Magistrate dated 18-9-1952. But we make no order about costs because the point on which we have proceeded was not taken in proper time in this Court.

JAGANNADHADAS, J. -

The order of the District Magistrate dated the 18th September, 1952, declining to grant a permit to hold the cattle fair on the ground that it has been decided to issue permits only to local bodies and not to private individuals is bad for two reasons.

> 1. The rules under which he is to grant or refuse permits in this behalf only authorise him to satisfy himself that the applicant is in a position to establish a proper system of conservancy, sanitation and watch and ward at the fair and also to impose such terms and conditions as he may deem fit. But they do not authorise him to reject an application on the ground on which he has done.
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> 2. The rules themselves under which the permit has been asked for and with reference to which the District Magistrate declined to grant the permit are not within the ambit of the rule-making power. These rules purport to have been framed in exercise of the powers conferred by sections 40 and 41 of the Ajmer Laws Regulation, 1877. Section 40 authorises the framing of the rules "for the maintenance of watch and ward and the establishment of a proper system of conservancy and sanitation at fairs and other large public assemblies". But the actual rules as framed are to the effect (1) that no such fair can be held except under a permit of the District

> Magistrate, (2) that before issuing a permit the District Magistrate is to satisfy himself that the applicant is in a position to establish a proper system of conservancy, sanitation and watch and ward at the fair, (3) that when issuing a permit the District Magistrate can impose such terms and conditions as he may deem fit. The net effect of these rules is merely to establish a system of ad hoc control by the District Magistrate through the issue of a permit and by the vesting of other powers in him under the rules. These cannot be said to be rules which in themselves constitute a system of conservancy, sanitation and watch and ward. Thus the result that is brought about is not within the intendment of the section which authorises the making of the rules. A system of ad hoc control of responsible officers may, possibly be one method of regulating the sanitary and other arrangements at such large gatherings. But if it is intended to constitute a system of ad hoc control with reasonable safeguards, the power to make rules in that behalf must be granted to the rule-making authority by the legislative organ in appropriate language.

The impugned order of the District Magistrate being bad on both the above grounds, this is enough to dispose of the appeal and it is not necessary to express any opinion as to whether the impugned order infringes also the appellant's fundamental rights under article 19. The appeal must accordingly be allowed.

Appeal allowed.

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