Sardar Govindrao and Others

Vs

State of Madhya Pradesh

Civil Appeal No. 182 of 1964

(CJI P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, J. R. Kudholkr, Raghubar Dayal JJ)

06.10.1964

JUDGMENT

HIDAYATULLAH J.

The appellants claiming to be the descendants of former ruling chiefs in the Hoshangabad and Nimar Districts of Madhya Pradesh applied under the Central Provinces and Berar Revocation of Land Revenue Exemptions Act, 1948, for grant of money or pension as suitable maintenance for themselves. By that Act, every estate, mahal, village or land which was exempted from the payment of the whole or part of land revenue by special grant of, or contract with the Crown, or under the provision of any law or rule for the time being in force or in pursuance of any other instrument was after the appointed date made liable to land revenue from the year 1948-49, notwithstanding anything contained in the grant, contract, law, rule or instrument. The appellants held estates in the two districts on favourable terms as Jahgirdars Maufidars and Ubaridars, and enjoyed an exemption from payment of land revenue amounting in the aggregate to Rs. 27,828-5-0 yearly. On the passing of the Act the exemption was lost and they claimed to be entitled to grant of money or pension under the provisions of the Act about to be set out. They applied to the Deputy Commissioner, who forwarded their application to the State Government. The State Government by its order No. 993/XVI-4, dated April 26, 1955 rejected their petition. No reasons are contained in that order.

The appellants thereupon filed a petition in the High Court of Madhya Pradesh under Art. 226 of the Constitution for a writ of certiorari to quash the order of the State Government. In that petition they contended that the rejection of their petition by the State Government without giving any reasons amounted to no decision at all and was an improper and illegal exercise of the power vested in the State Government by s. 5 of the Act. The State Government resisted the petition by contending that the appellants were not descendants of any former ruling chief and further that the exercise of the power by the State Government was proper and legal.

The petition in the High Court was heard and disposed of by a Full Bench. The learned Chief Justice, who delivered the judgment on behalf of the Full Bench held that the State Government was not compelled to grant either money or pension because the exercise of the power under s. 5 was discretionary and the petition, therefore was incompetent. No other question was gone into by the High Court even though a suit is barred under the provisions of the Act and a petition under Art. 226 would appear to be the only remedy in case the State Government failed to comply with the terms of the Act, or acted in an illegal manner.

The Act consists of eight sections. The revocation of exemption from liability for land revenue is laid down by s. 3, the purport of which has already appeared in this judgment. It is not necessary to

refer to that section in detail because in addition it speaks of lands in Berar governed by the Berar Land Revenue Code and of lands in Madhya Pradesh governed by the Central Provinces Land Revenue Act, 1917 and lays down the classes of such lands and the special rules applicable to them. In the present appeal we are not concerned with these details and they may, therefore, be put aside, Section 4 of the Act makes suitable amendments in the Central Provinces Land Revenue Act, 1917 and the Berar Land Revenue Code consequent upon the provisions of s. 3 of the Act. We need not attempt to set out these amendments. Section 5 then provides as follows :-

> "5. Awards of money grants or pension.
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> (1) Any person adversely affected by the provisions of section 3 may apply to the Deputy Commissioner of the district for the award of a grant or money or pension.
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> (2) The Deputy Commissioner shall forward the application to the Provincial Government, which may pass such orders as it deems fit.
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> (3) The Provincial Government may make a grant of money or pension -
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> (i) for the maintenance or upkeep of any religious, charitable or public institution or service of a like nature, or
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> (ii) for suitable maintenance of any family of a descendant from a former ruling chief.
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> (4) Any amount sanctioned by way of grant of money or pension under this section shall be a charge on the revenues of the Province."
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> Section 6 bars the jurisdiction of civil courts. Section 8 enables the Provincial Government to make rules for carrying out the purposes of the Act. Section 7 grants power to the State Government to grant exemptions from payment of land revenue under the Central Provinces Land Revenue Act, 1917 and the Berar Land Revenue Code in whole or in part, as it may deem fit.

The short question in this appeal is whether the provisions of s. 5(3) make it obligatory upon the State Government to make a suitable grant of money or pension in case it is proved that the applicant has lost the exemption under the Act and is a descendant from a former ruling chief ? The Full Bench of the High Court was of the view that there was no obligation on the State Government to make such a grant inasmuch as s. 5(3) was discretionary. The appellants contend that the view of the High Court of s. 5(3) is erroneous and the section is mandatory notwithstanding the use of language which appears to confer a discretion, provided the other conditions of the sub-section are fulfilled.

Before we deal with this question we may also refer to the rules which have been framed under s. 8 of the Act. These rules were made for dealing with applications received under s. 5(1) of the Act. They are six in number. After defining the terms 'maufi', 'inam', 'maufidar' and 'inamdar', rule 3 says that on receipt of the application the Deputy Commissioner may enquire into it personally or may transfer it to a Revenue Officer not below the rank of Extra Assistant Commissioner for enquiry and report. Rule 4 then provides what the enquiry should cover. Though the rule is divided into sub-rules (a) to (g), under sub-rules (a) to (e) the enquiry is directed to ascertain the lands held by the applicant, his income, class of maufi or inam and the details of the maufi and inam. There were

many maufidars, ubaridars, who were holding lands under diverse titles and concessions. Sub-rules (a) to (e) seem to apply to all the applicants. When however, a maufi is held by any religious, charitable or public institution or for any service as stated in s. 5(3)(i) quoted above or is held for maintenance by a descendant of a former ruling chief as mentioned in s. 5(3)(ii), sub-rules (f) and (g) apply in addition to sub-rules (a) to (e). Under sub-rule (f) some special enquiry is required to be made in respect of religious, charitable or public institutions or service, such as, whether the institution should be continued to be maintained or service continued to be rendered and the minimum annual expenditure required for the maintenance of the institution or the service. Sub-rule (g) then says :-

> "In the case of maufi or inam for the maintenance of a descendant of a former ruling chief the following further information should also be furnished :-
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> # . . . . . .##

This is followed by four sub-rules : the first lays down that the minimum amount required to ensure suitable maintenance of the family should be stated after enquiry; the second requires that any other source of income should be specified; the third requires the enquiring officer to state the extent to which such a person is dependent on maufi income and the fourth requires that his loyalty to Government should be ascertained. Rule 5 then enjoins that after completing the enquiry the Deputy Commissioner should make his report and his recommendation. Rule 6 provides that the Deputy Commissioner should also consider whether it would be desirable to exempt some land from liability to pay land revenue in whole or part under s. 7 instead of making a money grant under s. 5(3).

It is contended on behalf of the State of Madhya Pradesh that the powers exercisable under the Act are in the discretion of the Government and there can be no remedy by way of a writ under Art. 226 of the Constitution. It is pointed out in support of the submission that sub-s. (2) of s. 5 confers on the Government complete discretion because it says "that the Provincial (State) Government" . . . . "may pass such orders as it deems fit" in respect of every application forwarded by the Deputy Commissioner, and that sub-s. (3) is also worded in language which is directory where it says "The Provincial (State) Government may make a grant of money or pension etc." This view appears to have been accepted in the High Court.

In our opinion, this contention cannot be supported if the scheme of the fifth section is closely examined. No doubt, the Deputy Commissioner is required to make enquiries and to forward all applications to Government and Government has been given the power to pass such orders as it deems fit but the operation of sub-s. (2) and the discretion in it relates to applications in general while in respect of some of the applications the order has to be made under the third sub-section where the discretion is to a considerable extent modified. The rules here help in the understanding of the third sub section.

In all cases an enquiry has to be made which generally follows a pattern disclosed by rule 4, sub-rules (a) to (e). But in cases of maufi or inam held by religious, charitable or public institutions or service or in case of a maufi or inam for the maintenance of a descendant of a former ruling chief additional enquiries have to be made. The rules highlight the distinction between revocation of exemption in the case of persons belonging to two special categories and the revocation of exemption in the case of others. It will be noticed presently that s. 5 of the Act also follows the same scheme and the rules do no more than emphasise the special character of sub-s. (3) of s. 5. Power

has been conferred on Government to make some other lands free from land revenue so that sometimes a grant of money or pension and sometimes exemption from land revenue may be ordered. It could hardly have been intended that sub-s. (3) s. (5) was to be rendered nugatory in its purpose by the operation of the discretion conferred by sub-s. (2). The two sub-sections have to be read separately because though the word "may" appears in both of them that word in sub-s. (3) takes its meaning from an obligation which is laid upon Government in respect of certain institutions, and persons if the stated conditions are fulfilled. It is impossible to think that in the case of a religious, charitable or public institution which must be continued or in the case of descendants of former ruling chiefs, Government possessed an absolute discretion to refuse to make a grant of money or pension for their maintenance or upkeep even though they satisfied all the conditions for such a grant and were deserving of a grant of money or pension. The word "may" in s. 5(3) must be interpreted as mandatory when the conditions precedent, namely, the existence of a religious, charitable or public institutions which ought to be continued or of the descendants of a ruling chief, is established. The words "may pass such orders as it deems fit" in sub-s. (2) mean no more than that Government must make its orders to fit the occasion, the kind of order to be made being determined by the necessity of the occasion. As stated in Maxwell on the Interpretation of Statues (11th edn. p. 231) :

> "Statutes which authorise persons to do acts for the benefit of others, or, as it is sometimes said, for the public good or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they "may", or "shall, if they think fit," or, "shall have power," or that "it shall be lawful" for them to do such acts a statute appears to use the language of mere permission, but it has been so often decided as to have become an axiom that in such cases such expressions may have - to say the least - a compulsory force, and so would seem to be modified by judicial exposition."

This is an instance where, on the existence of the condition precedent, the grant of money or pension becomes obligatory on the Government notwithstanding that in s. 5(2) the Government has been given the power to pass such orders as it deems fit and in sub-s. (3) the word "may" is used. The word "may" is often read as "shall" or "must" when there is something in the nature of the thing to be done which makes it the duty of the person on whom the power is conferred to exercise the power. Section 5(2) is discretionary because it takes into account all cases which may be brought before the Government of persons claiming to be adversely affected by the provisions of s. 3 of the Act. Many such persons may have no claims at although they may in a general way be said to have been adversely affected by s. 3. If the power was to be discretionary in every case there was no need to enact further than sub-s. (2). The reason why two sub-sections were enacted is not far to seek. That Government may have to select some for consideration under sub-s. (3) and some under s. 7 and may have to dismiss the claims of some others requires the conferment of a discretion and sub-s. (2) does no more than to give that discretion to Government and the word "may" in that subsection bears its ordinary meaning. The word "may" in sub-s. (3) has, however, a different purport. Under that sub-section Government must, if it is satisfied that an institution or service must be continued or that there is a descendant of a former ruling chief, grant money or pension to the institution or service or to the descendant of the former ruling chief, as the case may be. Of course, it need not make a grant if the person claiming is not a descendant of a former ruling chief or there is other reasonable ground not to grant money or pension. But except in those cases where there are good grounds for not granting the pension, Government is bound to make a grant to those who fulfil the required condition and the word "may" in the third sub-section though apparently discretionary has to be read as "must". The High Court was in error in thinking that the third sub-section also like

the second conferred an absolute discretion.

The next question is whether Government was justified in making the order of April 26, 1955 ? That order gives no reasons at all. The Act lays upon the Government a duty which obviously must be performed in a judicial manner. The appellants do not seem to have been heard at all. The Act bars a suit and there is all the more reason that Government must deal with such case in a quasi-judicial manner giving an opportunity to the claimants to state their case in the light of the report of the Deputy Commissioner. The appellants were also entitled to know the reason why their claim for the grant of money or a pension was rejected by Government and how they were considered as not falling within the class of persons who it was clearly intended by the Act to be compensated in this manner. Even in those cases where the order of the Government is based upon confidential material this Court has insisted that reasons should appear when Government performs curial or quasi-judicial functions (see Messrs Hari Nagar Sugar Mills Ltd. v. Shyam Sunder Jhunihunwala & Others ([1962] 2 S.C.R. 339). The High Court did not go into any other question at all because it rejected the petition at the threshold on its interpretation of s. 5(3). That interpretation has been found by us to be erroneous and the order of the High Court must be set aside. As the order of Government does not fulfill the elementary requirements of a quasi-judicial process we do not consider it necessary to order a remit to the High Court. The order of the State Government must be set aside and the Government directed to dispose of the case in the light of our remarks and we order accordingly. The respondents shall pay the costs of the appellants in this Court and the High Court.

Appeal allowed.

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