

Mangulal Chunilal

Vs

Manilal Maganlal & Anr.

Criminal Appeal No. 59 of 1965

(K. S. Hegde, S. M. Sikri, J. M. Shelat JJ)

23.11.1967

JUDGMENT

SIKRI, J. :-

This appeal by certificate granted by the High Court of Gujarat is directed against the judgment and order of the said High Court in Criminal Revision Application No. 145 of 1964 whereby the High Court allowed the application and set aside the conviction and sentence of Manilal Maganlal, one of the respondents before us. The only point involved in this appeal is whether the licence inspector, Mangulal Chunilal, was competent to file the complaint under s. 376(1)(d)(i), read with s. 392(1)(a), of the Bombay Provincial Municipal Corporation Act, 1949, hereinafter referred to as the Act.

The relevant facts are not now in dispute and are as follows : On October 10, 1963, Mangulal Chunilal, licence inspector, filed a complaint against Manilal Maganlal, hereinafter referred to as the accused, alleging that the accused had carried on the work of blacksmith by manufacturing machinery, spare parts and safe cupboards, without obtaining licence. At the end of the complaint it was stated :

"I have obtained permission for filing this complaint from the Medical Officer of Health by order No. dated 1-10-63."

The licence Inspector had applied to the Deputy Health Officer, Ahmedabad Municipal Corporation, to accord permission to file the complaint as offence under s. 392(1)(a) of the Act had been committed. The Deputy Health Officer noted :

"Permission is granted under Section 481(1)(a) of Chapter 30 of the Bombay Provincial Municipal Corporation Act of 1949 to file complaint for the offence committed in breach of the provisions of law as shown in the above report."

The Deputy Health Officer (including Deputy Health Officer, Food and Licence Branch) had been delegated certain powers under s. 69(1) of the Act by the Municipal Commissioner. The powers delegated to the Deputy Health Officer include :

#"Power to take proceedings against Sec. 481(1)(a)(i)(iii)any person who charged with* * *##

Any offence

(i) Under Section 392(i) and/or 392(2) of the B.P.M.C. Act 1949 for breach of provisions mentioned in section below :-

164, 184(1)(a), 233(1), 297, 376, 377(1), 381, 383, 384".

It was contended before the High Court that the complaint had been filed by the Licence Inspector whereas the delegation under s. 69 of the Act was to the Deputy Health Officer to take proceedings as provided in s. 481 of the Act. It was contended that the expression "take proceedings" in s. 481 means instituting a complaint and does not mean causing a complaint to be filed. Raju, J., who heard the revision, accepted this contention. He declined to follow the judgment of the Bombay High Court in *The State v. Manilal Jethalal* [(1953) 55 B.L.R. 377] in which it had been held that the words "take proceedings" meant "order proceedings to be taken."

The learned counsel for the appellant contends (1) that the decision of the Bombay High Court in *The State v. Manilal Jethalal* [(1953) 55 B.L.R. 377] was binding on the learned Judge in view of the full bench decision in *State of Gujarat v. Gordhandas Keshavji Gandhi* [(1962) 3 Guj. L.R. 269]; (2) that power to take proceedings includes power to authorise others to institute proceedings in the context of the Act and (3) that there were no limiting words in the order delegating the power to the Deputy Health Officer that he should file a complaint himself and not authorise others.

The respondents are unfortunately not represented before us. This Court had already held in *T. P. Thakur v. Ratilal Motilal Patel* [[1968] 1 S. C. R. 455] that the judgment of the Full Bench of the Gujarat High Court in *State of Gujarat v. Gordhandas Keshavji Gandhi* [(1962) 3 Guj. L. R. 269] was binding on Raju, J. Following that judgment we hold that Raju, J., was not entitled to dissent from the judgment of the Bombay High Court in *The State v. Manilal Jethalal* [(1953) 55 B. L. R. 377].

Before dealing with the main point raised before us it is necessary to set out the relevant provisions of the Act :

"S. 69(1). Subject to the provisions of sub-sections (2) and (3), any of the powers, duties or functions conferred or imposed upon or vested in the Commissioner or the Transport Manager by or under any of the provisions of this Act may be exercised, performed or discharged, under the control of the Commissioner or the Transport Manager, as the case may be and subject to his revision and to such conditions and limitations, if any, as may be prescribed by rules, or as he shall think fit to prescribe in a manner not inconsistent with the provisions of this Act or rules, by any municipal officer whom the Commissioner or the Transport Manager generally or specially empowers by order in writing in this behalf; and to the extent to which any municipal officer is so empowered the word "Commissioner" and the words "Transport Manager" occurring in any provision in this Act, shall be deemed to include such officer.

S. 481.(1) The Commissioner may -

(a) take, or withdraw from proceedings against any person who is charged with -

(i) any offence against this Act or any rule, regulation or by-law;

(ii) any offence which affects or is likely to affect any property or interest of the

Corporation or the due administration of this Act;

(iii) committing any nuisance whatever;

(b) compound any offence against this Act or any rule, regulation or by-law which under the law for the time being in force may legally be compounded;

(c) defend any election petition brought under Section 16;

(d) defend, admit or compromise any appeal against a rateable value or tax brought under Section 406;

(e) take, withdraw from or compromise, proceedings under sub-section (2) of Section 402, sub-sections (3) and (4) of Section 439 and Sections 391 and 416 for the recovery of expenses or compensation claimed to be due to the Corporation;

(f) withdraw or compromise any claim for a sum not exceeding five hundred rupees against any person in respect of a penalty payable under a contract entered into with such person by the Commissioner, or, with the approval of the Standing Committee, any such claim for any sum exceeding five hundred rupees;

(g) defend any suit or other legal proceedings brought against the Corporation or against the Commissioner or a municipal officer or servant in respect of anything done or omitted to be done by them, respectively, in their official capacity;

(h) with the approval of the Standing Committee, admit or compromise any claim, suit or legal proceeding brought against the Corporation or against the Commissioner or a municipal officer or servant, in respect of anything done or omitted to be done as aforesaid;

(i) with the like approval, institute and prosecute any suit or withdraw from or compromise any suit or any claim other than a claim of the description specified in clause (f), which has been instituted or made in the name of the Corporation or the Commissioner;."

It is not disputed that s. 69 enables the Commissioner to delegate powers duties or functions conferred or imposed upon him or vested in him to a municipal officer. The Commissioner having delegated his powers to the Deputy Health Officer, the question arises whether it is the Deputy Health Officer or the Licence Inspector who should take proceedings against the accused within the meaning of s. 481(1)(a). It is not disputed that under sub-cl. (b), (c), (d), (f), (g), (h) and (i) of s. 481(1), the various actions contemplated in these sub-clauses would have to be taken by the delegate himself. In other words, he would have to institute a suit within sub-cl. (i) and admit or compromise any claim, suit or legal proceeding within sub-cl. (h), but it is said that the word "take" has been deliberately used in sub-cl. (a) and (e) to enable the delegate to entrust initiation of proceedings to another person because otherwise it would be impossible to carry on the administration of the municipality. It is said that thousands of complaints have to be filed and it would be casting undue burden on the Deputy Health Officer to sign all the complaints. We are not impressed by this argument. It is true that the word "take" has various meanings but no dictionary or authority has been placed before us to show that the word can mean "cause to be taken". It seems to us that the word "take" was used because if the word "institute" had been used it may not have been appropriate

to cover all proceedings that can be taken under s. 481(1)(a).

Bavdakar, J., had observed in *The State v. Manilal Jethalal* [(1953) 55 B. L. R. 377-379] :

"One can see easily why the words "take" are used. It was desired to combine in one clause the two powers, the power to launch proceedings and the power to withdraw proceedings, and if the words "withdraw from proceedings" were used, it was not easy to use the words "order proceedings to be taken" in combination with the words "withdraw proceedings."

We are unable to accept this as correct. Bavdekar, J., further observed :

"If the Legislature had in such a case really wanted that the complaint should actually be either of the Commissioner or an officer empowered by him, it would have been perfectly easy to use the words which find place in several Acts, for example, "except upon a complaint in writing of the Commissioner or an officer to whom he has delegated his powers."

It is true that if the language suggested by him had been used no dispute would have arisen. But we are not free to interpret the words "take proceedings" to mean "order proceedings to be taken" because the word "take" is an English word and we can only ascribe to it a meaning which it bears in the English language.

The learned counsel for the appellant says that since the decision of the Bombay High Court in *The State v. Manilal Jethalal* [(1953) 55 B. L. R. 377-379] no other decision has taken any other view and we should not disturb the view which has prevailed since that decision. We are unable to accept this contention. This is not a case where a series of decisions have taken a particular view and that view has been widely accepted and various rights have accrued to parties acting on that view. A person who files a complaint under the Act must show that he has the authority to file that complaint and that authority cannot be conferred upon him by an erroneous interpretation long acquiesced in. This Court held in *Ballavdas Agarwala v. J. C. Chakravarty* [[1960] 2 S.C.R. 739] that a complaint under the Calcutta Municipal Act, 1923, could only be filed by the authorities mentioned therein and not by an ordinary citizen. Similarly, here it seems to us that only the authorities mentioned in s. 481, read with s. 69, can launch proceedings against persons charged with offences under the Act or the rules, regulations or bye-laws made under it. This Court noticed the decision of the Bombay High Court in *Manilal Jethalal's case* [(1953) 55 B.L.R. 377-379] in *Ballavdas Agarwala v. J. C. Chakravarty* [[1960] 2 S.C.R. 739] and observed :

"The decision proceeded, however, on a somewhat wide meaning given to the words 'take proceedings' that part of the decision, as to the correctness of which we say nothing, does not concern us here, because the words used in s. 537 of the Calcutta Municipal Act are different."

We may mention that Hidayatullah, J., observed at p. 764 in *Ballavdas Agarwala's case* [[1960] 2 S.C.R. 739] :

"An officer of the municipality must himself perform his duties created by statute or bye-law. He cannot delegate them to others, unless expressly authorised in this behalf. The Act does not so empower the officers to delegate their functions in their turn, and thus an officer to whom the power is delegated by the Chairman must

perform them himself."

We agree with the above observations of Hidayatullah, J. On this point there does not seem to have been any difference of opinion between him and the majority; he differed only on the question whether on the facts in that case there was in fact a delegation or not.

For the aforesaid reasons we dismiss the appeal and maintain the order passed by the High Court.

Appeal dismissed.

</html