

BOMBAY HIGH COURT

Dhondu Dagdu Patil

Vs

Secretary of State

(Batchelor and Rao , JJ.)

19.08.1912

JUDGMENT

Batchelor, J.

1. The appellant before us, who was the plaintiff in the Court below, had during the years 1908 to 1910 a licence for the sale of country liquor in the town of Nasik. As his work during that period was found to be satisfactory the Collector of the District gave him notice intimating that that Officer was willing to renew his licence for the year beginning with the 1st of April 1910. On the 14th of March 1910 the plaintiff expressed his willingness to accept the licence, and under Section 31 of the Abkari Act (Bom. Act V of 1878) executed the agreement therein referred to. On the 31st March 1910 the Collector informed the plaintiff that his licence was suspended, and on the 6th of April following the Collector further intimated to the plaintiff that he had cancelled the plaintiff's licence on the ground that he had come to learn that the plaintiff had given secret bribes to the Collector's Head Clerk. Aggrieved by this decision the plaintiff appealed from the Collector's revocation of the licence to the Commissioner and to Government, but in each case was unsuccessful. Therefore after notice given he, on the 30th March 1911, filed this suit.

2. It has been dismissed by the learned Judge of the lower Court on two grounds, both of them having reference to Section 67 of the Bombay Abkari Act. In the first place the learned District Judge has held that the defendant is protected by reason of the provision that "no action shall lie against Government for any act bona fide done by them in pursuance of the Act; " and, secondly, he has held that the suit is time-barred by reason of the provision requiring that " all actions which may be lawfully brought against Government, in respect of anything done in pursuance of the Act, shall be instituted within four months from the date of the act complained of and not afterwards."

3. Upon both grounds it appears to us to be clear that the learned Judge below is right. Admittedly the act complained of was the act of revoking the plaintiff's licence, which was done

by the Collector on the 31st March 1910, and admittedly the plaintiff's suit was instituted very much more than four months after that act. It is sought by the learned Counsel for the appellant to save the suit on the footing that the Collector's act was not an act bona fide done in pursuance of the Statute, so that Section 67 would have no application.

4. The only question, therefore, involved is whether in the circumstances of this case the Collector's act was bona fide done in pursuance of the Statute. That it was an act bona fide done there can, we think, be no doubt. The lower Court writes that " there can be no question that he honestly believed he was justified in doing what he did." And nothing has been said before us to countenance the view that when the Collector formed the opinion that the plaintiff had bribed his Head Clerk he formed that opinion perversely or unreasonably. So far, therefore, as the record of this case goes, we must accept the finding that the Collector's opinion was formed in good faith, and upon materials which seemed to him sufficient to justify that opinion. It is true that when at a much later date the prosecution was instituted against the plaintiff and the Collector's Head Clerk, that prosecution was not successful, but this circumstance seems to us not to negative the view which we have expressed.

5. If then the Collector's act was done in good faith, was it an act done in pursuance of the Act ? We think it was. Under Section 32 of the Statute the Collector had power summarily to recall or cancel any licence if the holder thereof were convicted of any criminal offence. Now the bribing of the Collector's Head Clerk would be a criminal offence. Consequently the appeal must be decided on the footing that at the time the Collector revoked the plaintiff's licence the Collector in good faith believed that the plaintiff had committed an offence, for which, on conviction, his licence would be revocable. It is quite true that the Collector's action is not strictly in conformity with the section which authorizes the revocation only on the actual conviction of the licensee. But the circumstances under which the Collector acted are so near the circumstances legally entitling him to act as he did that we feel bound to say the act was done in pursuance of the Statute. The law upon this point may be found stated in many cases, of which we may notice *Hermann v. Seneschal*¹ In strictness, anything not authorized by a Statute cannot be said to be in pursuance of it, while if it is authorized by the Statute clearly it would need no other protection. But if effect were given to such a construction it would altogether do away with the protection intended to be given ; accordingly the general principle is that if any public or private body charged with the execution of a Statute honestly intends to put the law in motion and really and not unreasonably believes in the existence of facts, which, if existent, would justify his acting, and acts accordingly, his conduct will be in pursuance of the Statute and will be protected. Reference may also be made to the case of *Spooner v. Juddow*² which was cited by the District Judge, and in which Lord Campbell said " there can be no rule more firmly established than that if parties bona fide and not absurdly believe that they are acting in pursuance of Statutes, and accordingly to law, they are entitled to the special protection which the Legislature intended for them, although they have done an illegal act." The rule, no doubt, has its limits, but we cannot doubt that it applies to such a case as this where the belief that the Statute could properly be

enforced was honestly entertained and the facts thus believed differed but little from the facts which, if they had existed, would have invested the Collector with complete authority under the Statute to do the act complained of.

6. It appears to us, therefore, that on the facts as we have them here there is no room to doubt that the Collector's act was done in good faith and in pursuance of the Statute. That being so, the defendant is entitled to the protection afforded by Section 67 of the Act, and the suit is also beyond time.

7. On these grounds we affirm the decree and dismiss the appeal with costs. Decree confirmed.

Cases Referred.

1(1862) 32 L. J. C. P. 43

2(1850) 4 M. I. A. 353, 379