

NAGPUR HIGH COURT

Gram Panchayat

Vs

Multi Purpose Co-operative Society of Vidul

Misc. Petn. No. 257 of 1952

(Sinha, C.J., and Bhutt, J.)

09.12.1951. 09.07.1953

JUDGMENT

Sinha, C.J.

1. This application under Article 226 of the Constitution of India is directed against the order of the Sub-Divisional Officer, Darwha-Pusad, by which the amount of the fine of Rs. 50/- imposed by the petitioner on respondent No. 1 under Rule 5 for breach of Rule 1 of Clause XXV of the Central Provinces and Berar Panchayat Rules, 1948, (hereinafter called the Rules), was reduced to Rs. 5/-.

2. The petitioner is a Gram Panchayat at Vidul in taluq Pusad of Yeotmal district, which is constituted under the Central Provinces and Berar Panchayats Act, 1946, (hereinafter called the Act). Respondent No. 1 is the Multi-Purpose Co-operative Society at Vidul within the Gram Panchayat area. Under Section 41 (2) of the Act, the Gram Panchayat was entitled to require every person practising the calling of buyer, broker, commission agent, weigher or measurer within its area to take out a license and to levy such fee therefor as may be prescribed. In pursuance of this authority read with Rule 1 of Clause XXV of the Rules the petitioner Gram Panchayat in a meeting held on the 3rd May 1950 passed a resolution directing issue of notices to persons who had not obtained the requisite license. Accordingly a notice dated the 12th May 1950 was served on the Manager of the respondent Society calling on him to obtain a license on payment of the prescribed fee of Rs. 4/-. To this notice the Society sent a reply dated the 14th May 1950 challenging the right of the Gram Panchayat to levy the license-fee and intimated that recovery proceedings be stayed till the decision of the appeal that it intended to file in the matter.

3. Action on the notice dated the 12th May 1950 was not taken until on the 19th June 1950 a notice was again sent to the Society requiring it to pay the license-fee within 3 days, and failing payment to show cause why a fine of Rs. 10/- should not be levied in accordance with Section 47 of the Act. To this notice a reply was sent by the Society on the 20th June 1950 intimating that it had filed an appeal to the Deputy Commissioner, Yeotmal, against the proposed levy of license-fee, and that action be stayed until the decision of the appeal.

4. The Gram Panchayat, on receipt of the report of its peon Dhondu Narayan, dated the 6th-

November 1950, sent a notice on the 9th November 1950 to its members of a special meeting to be held on the 10th November 1950. In the report it was alleged that the Society purchased cotton from Jalba Mahadu and Ramkrishna Ganpat, of Vidul, Datta Bapuji Gurav and several others without taking out a license. Amongst the members of the Gram Panchayat are Shri Shankar Gopal Deshmukh and Shri Umakant Krishnappa Komti who are the office bearers of the Society. The notice dated the 9th November 1950 does not bear the signature of these two members. The case of the Gram Panchayat was that this notice was served on them, whereas the Society alleged that it was not sent to them at all and that no meeting was really held on the 10th November 1950. In the view we take of the case, it is not necessary to consider this point and we shall assume that the notice was duly served and the meeting was held as alleged by the Gram Panchayat.

5. The notice dated the 9th November 1950 contained the agenda of the meeting to be held on the 10th November 1950. The relevant subjects for consideration were stated in the following terms, viz.,

"1. x x x x

(2) To consider (the report) made by the peon of the Village Panchayat that the Manager of the Co-operative Society of this place purchased cotton without a license,

(3) To give notices to the persons not taking licenses."

In the meeting held on the 10th November 1950 appearance was not put in by Shri Shankar Gopal Deshmukh and Shri Umakant Krishnappa Komti and the following resolution was passed in the presence of other members :

"The village Panchayat gave a notice to the Society according to the Resolution No. 2 of the meeting dated the 3rd May 1950, but the Society made an appeal in respect of license-fee on the ground that it did not at all do the business of purchases.

That appeal has not been decided as yet. Now "the Society has re-started the business of purchasing cotton without a license. The persons whose names have been supplied by the peon have also admitted to have sold cotton (to the Society). From this (it is clear that) the Society deliberately and completely committed breaches of Rule 1 of Clause XXV by not taking a license from the village Panchayat. On a perusal of all the previous proceedings of the village Panchayat (in connexion with the matter) (and from the fact that) on the one hand (the Society) states in the appeal before the Deputy Commissioner that it does not do the business of purchases and in fact (on the other hand) it does the business without taking a license it is clear that deliberately with a view to troubling the village Panchayat (the Society) by starting the business without taking a license in spite of knowing the law fully, has completely broken the above rule. The result of this in the entire village is this: The Co-operative Society, being a Government body, does not at all care for the village Panchayat.

Therefore, we unanimously fine the Manager of the Multi-purposes Co-operative Society Rs. 50/- under rule 5 for his having completely broken rule 1 of Clause XXV of the Village Panchayat Rules. He shall pay the same within three days."

6. In the meantime, on the 11th November 1950, the Society sent an application to the Gram Panchayat requesting that a license be issued to it on payment of the prescribed fee of Rs. 4/-. This application was made after the dismissal of the appeal preferred by the Society against the levy of the license-fee. On the 15th November 1950, however, the Gram Panchayat again sent a notice of demand for payment of the fine. Later a reply to the application was sent on the 21st November 1950 intimating that the Gram Panchayat had resolved that the license should be granted only after payment of the fine. The fine was recovered on the 24th December 1950 and the license was issued on the 9th January 1951.

7. On the 15th December 1950, that is, prior to the recovery of the fine and the issue of the license, the respondent Society preferred an appeal to the Deputy Commissioner, Yeotmal, against the order of the Gram Panchayat, dated the 10th November 1950, imposing the fine of Rs. 50/-, and also against its decision to refuse to issue a license without payment of the said amount. This appeal was treated as a revision which was registered as Revision Case No. 5/57 R/1950-51, and was decided by the Sub-Divisional Officer, Darwha-Pusad, on the 9th December 1951. This is the order that is impugned in these proceedings. The Sub-Divisional Officer held in the impugned order that there was no evidence except the report of the peon that the Society actually dealt in cotton. He further held that the grant of license could not be deferred until payment of the fine and that the proceedings relating to the levy of the fine were defective. He accordingly reduced the amount of fine from Rs. 50/- to Rs. 5/- and directed the Gram Panchayat to grant a license to the Society on payment of the prescribed fee of Rs. 4/-. With the latter part of the order we are not concerned in these proceedings as the license was already issued on the 9th January 1951.

8. Rule 5 of Clause XXV of the Rules provides that breach of Rule 1 shall be punishable with a fine which may extend to Rs. 50/-, to be levied by an order of the Gram Panchayat. Rule 1 is in terms of Section 41 (2) of the Act and is to the following effect :

"No person shall practice the calling of a buyer, broker, commission agent, weigher or measurer within the Gram Panchayat area without a license from the Gram Panchayat under these rules."

There is no rule in Clause XXV which provides for an appeal or revision from an order of the Gram Panchayat levying the fine under Rule 5. There is also no provision in the Act providing for an appeal or revision against an order passed under Rule 5. Rule 4 only provides for an appeal against an order of the Gram Panchayat refusing to issue a license. The appeal which was registered as Revision Case No. 5/57 R/1950-51, so far as it related to the levy of fine, was not, therefore, competent under the law and the order of the Sub-Divisional Officer reducing the amount of fine is consequently 'ultra vires'.

9. We have, however, no manner of doubt that the proceedings leading to the resolution of the Gram Panchayat to levy the fine offend against the principles of natural justice. It is true that so far as rule 5 of Clause XXV of the Rules is concerned, no procedure has been prescribed as in the case of evasion of the payment of tax, toll, fee or rate which is punishable under Section 47 of the Act read with Rules 1 and 2 of Clause XXXVI of the Rules, and since non-payment of tax, toll, fee or rate is distinct from the practising of the calling of buyer, broker, commission agent, weigher or measurer, the procedure laid down in Clause XXXVI of the Rules cannot be

applicable to the instant case. Nevertheless rule 5 of Clause XXV of the Rules is of a punitive nature and before any action could be taken under it, it was incumbent on the Gram Panchayat to specify the charge and serve a notice on the Society to show cause against the action that was proposed to be taken. As the matters stand, the notice dated the 19th June 1950 was not acted upon and irrespective of whether the notice dated the 9th November 1950 was served on Shri Shankar Gopal Deshmukh and Shri Umakant Krishnappa Komti, it was not a notice to the Society as such, nor did it state the action that was proposed to be taken against it. It is not, therefore, possible to hold that due opportunity was given to the Society to state its case, so as to make the decision of the Gram Panchayat binding on it.

10. The extraordinary powers under Article 226 of the Constitution are intended to be exercised in grave cases of manifest injustice. (See - '*Veerappa v. Raman and Raman Ltd*'.). It is not obligatory on a High Court to act under the Constitution in every case where there has been an error of law. Even if, therefore, an order may be erroneous but if it has set right a grave miscarriage of justice, it would not be proper to interfere under the special powers under the Constitution. The order of the Gram Panchayat offends against the canons of natural justice and even though the impugned order is void to the extent that it reduced the amount of the fine, interference with it under the Constitution would not be justified as it has rectified, even if partially, the manifest injustice that the Gram Panchayat had done to the Society.

11. Consistently with the above, we cannot also maintain the fine of Rs. 5/- that has not been remitted by the Sub-Divisional Officer. We accordingly set aside both the order of the Gram Panchayat, dated the 10th November 1950, imposing the fine of Rs. 50/-, and the order of the Sub-Divisional Officer, dated the 9th December 1951, so far as it maintained the fine to the extent of Rs. 5/-. In the circumstances of the case, we order that the parties do bear their own costs of the present proceedings. The amount of security be refunded to the petitioner.

Order accordingly.

¹ AIR 1952 SC 192