

(1960) 03 KL CK 0032

High Court Of Kerala

Case No: O.P. No. 779 of 1958

Vasudevan Nambudiri

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: March 23, 1960

Acts Referred:

- Stamp Act, 1899 - Section 57

Citation: (1960) KLJ 748

Hon'ble Judges: S. Velu Pillai, J

Bench: Single Bench

Advocate: V.S. Moothathu and A.D. Krishnan Asan, for the Appellant;

Final Decision: Allowed

Judgement

Velu Pillai, J.

This is a petition on behalf of Jenmies as defined by the Travancore Jenmi and Kudiyan Act of 1071, as amended by the Amendment Act XII of 1108, hereinafter referred to as the Act, for the issue of a writ of mandamus or other appropriate writ or direction to the respondent, the State of Kerala, to revise in accordance with Section 46 of the Act and the Rules framed thereunder, the commutation rates for Jenmikaram, as settled in kind, fixed by a notification Ext. P. dated March 4, 1944. The right of the Kudiyan to pay in money, the value of the commodity deliverable in kind is derived from Section 18 of the Act which has provided, that

Where the Jenmikaram or any portion of it, consists of paddy or other commodity, the Kudiyan shall be entitled to pay in money the value of such paddy or other commodity at the commutation rates fixed under the provisions of Section 46.

Section 46, omitting parts of it which are not material, is in the following terms:--

Sec. 46(1) "Subject to the provisions of this Regulation, Our Government may from time to time fix the rates for the commutation into money or paddy or other

commodities for the purposes of this Regulation and notify the same in Our Government Gazette, and the rates, so fixed shall be the rates for commutation for the purposes of this Regulation".

Explanation 2. "The power to fix rates includes the power to revise rates already fixed."

(2) "In fixing the rates, Our Government shall be guided by such Rules as may be passed by Our Government after previous publication."

(3) "Such Rules shall, inter alia, provide for the appointment of a Committee to advise Our Government as to the rates to be fixed under this Section. The Committee shall consist of five members, two to represent the Jenmi interests, two to represent the Kudiyan interests and one, an Official, to be the Chairman, and shall follow such procedure as may be prescribed".

Rules have been framed under the Act, called the "Jenmikaram Payment and Commutation Rules" and may be referred to shortly as the Rules. Rule 2(a) defines "Commutation Rates" as meaning "rates at which paddy or other commodities forming part of Jenmikaram are to be commuted into money for purposes of payment and recovery of the Jenmikaram". Rule 6 provides that

the commutation rates once fixed shall ordinarily remain in force for two years but may be revised at any time and shall remain in force until rates are fixed in their place afresh.

By Rule 8, Government have to appoint a Committee as required by Section 46(3) of the Act, and by Rule 25, commutation rates have to be fixed, having regard inter alia to the following, among other matters :--

(i) "The price at which the Kudiyan can sell the commodity in a convenient market in or near the Taluk in which the land liable to the payment of Jenmikaram is situate."

(ii) "The price at which the Jenmi can buy the commodity in a convenient market in or near the Taluk where the commodity is likely to be spent by him".

(iii) "The fact that within the period of the instalment of payment the prices may vary from time to time."

(iv) "The cost of the remittance of the Jenmikaram by the Kudiyan to the Jenmi."

(v) "That a percentage variation may be necessary for equalising prices"

The above are the material provisions of the Act and the relevant Rules which bear on the controversy in this case.

It has to be noted, that the commutation rates under Ext. P were fixed sixteen years ago. The petitioners have alleged in the affidavit in support of the petition, to which no counter has been filed, that the commodity prices have since registered a

considerable rise and that the rates fixed in Ext. P do not reflect the prevailing market position. They have also produced Ext. P.1, as evidence of the market rates which prevailed in the year 1958, and which, it was not denied, are higher than those in Ext. P. It has not been disputed that the Jenmies had been time and again making representations to the first respondent, to take steps for revising the rates, but to no purpose. At last three members of the Association representing the Jenmies moved this court by O.P. No. 142 of 1953 for a writ of mandamus to issue to the respondent, to revise the rates, but the Government Pleader then represented to the court, that a report on the subject had been received by the respondent from the Board of Revenue and that "the feasibility of appointing a committee as envisaged under the rules" for a revision of the rates was in contemplation. On this representation, the petition was dismissed, with liberty to the petitioners to move again "in case no definite action is taken by the State within three months from the date"; this was on July 27, 1954. The present petition has been filed in these circumstances.

2. On a reading of the provisions of the Act and the Rules extracted above, there is no doubt in my mind, that the object is to secure a just correspondence between the commutation rates and the prevailing market rates as far as possible; at the same time, it is not every little fluctuation in the market which can be taken into account by Government, and hence provision has been made in Rule 6, the intendment of which, as I understand, is, that rates once fixed shall be in force for two years, though even during this period Government can revise them, if a proper case is made out for revision. According to the learned counsel for the petitioners, the word "may" in the expression "may from time to time fix the rates for the commutation" means "shall" and imposes a duty on Government to make periodical revisions, as occasion demands, while the learned Government Pleader contended, that the word is only permissive or enabling and in any event, taken in conjunction with the expression "from time to time" has conferred only a discretionary power on Government which it cannot be compelled by mandamus to exercise, that, in other words, there is no duty or obligation on the part of Government to revise the rates at any time. The expression "from time to time" has received more than one judicial interpretation in decided cases, which are collected in Stroud's Judicial Dictionary, 3rd Edition, Volume II, page 1185; but I am of the opinion, that in the context of Section 46 (1) of the Act, it means "as occasion may arise", which was the interpretation placed upon it by Williams J. in *Bryan v Arthur*, 11 A & E 117. This may mean simply, that u/s 46(1), Government has the power to decide whether the occasion has arisen, calling for a revision of the rates, unless a duty so to decide is coupled with or implied in it.

3. Ordinarily, the word "may" is permissive or enabling, as distinguished from the word "shall" and involves an element of discretion; but cases are not wanting of high authority in which the word has been so construed as to import also an element of duty or obligation into the concept. In *Julius v Lord Bishop of Oxford*,

1880 A. C. 214, observing that the words "it shall be lawful" in the concerned statute are enabling. The Lord Chancellor stated the principle thus:

But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so.

It was further observed:

.....where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the Court will require it to be exercised.

In the same case Lord Blackburn stated that:

if the object for which the power is conferred is for the purpose of enforcing a right, there may be a duty cast on the donee of the power to exercise it for the benefit of those who have that right, when required on their behalf. Where there is such a duty, it is not inaccurate to say that the words conferring the power are equivalent to saying that the donee must exercise it.

In AIR 1923 138 (Privy Council) , Lord Phillimore observed that:

when a capacity or power is given to a public authority, there may be circumstances which couple with the power a duty to exercise it.

This principle was applied by the Supreme Court in Chief Controlling Revenue Authority v M. S. Mills, AIR 1950 S. C. 218, to compel the Authority to refer a case to the High Court u/s 57 of the Stamp Act, 1899, which provided that "the Chief Controlling Revenue Authority may state a case.....

on the ground that these words were sufficient to impose an obligation to refer. For this purpose, permissive words and expressions such as "may", "shall if they think fit", "shall have power" and "it shall be lawful" are all of the same import-- See Maxwell on Interpretation of Statutes, 10th Edition, pages 239 to 248.

4. Other decided cases furnish illustrations of the application of this principle. In R. v Metropolitan Police Commissioners, (1911) 2 K. B. 1131 licensing authorities empowered to renew licenses of taxicab drivers and stevedores were held obliged to do so, when an applicant had complied with the prescribed procedural requirements; in R. v Tynemouth, R.D.C. (1896) 2 Q.B. 219 local authorities empowered to approve building plans were held to be obliged to approve plans that were in conformity with their bylaws. Enabling words were held to impose

obligatory duly "where by the joint effect of Bankrupts Act, 1871 (13 Elis. C. 7), S. 2 and Bankrupts Act 1684 (1 Jac 1, C. 15) S. 3, the Lord Chancellor "shall have full power and authority" to issue a bankruptcy commission" and "where by Arbitration Act, 1889 (52 and 53 Vict. C. 49), S. 5, the court "may" appoint an arbitrator or umpire (per Esher M. R. Re Bvve and Leicester--1892 1 Q. B. 136)"--See Stroud's Judicial Dictionary, 3rd Edition, Volume III, page 1757. It is unnecessary to multiply instances. The principle may perhaps be stated differently. Granting that a discretion is vested in Government, whether to act or not u/s 46 of the Act, this court can compel Government by mandamus at least to exercise that discretion, that is, having regard to the object underlying the provisions of the Act and the Rules quoted above, to decide whether the time has not come or the occasion has not arisen for setting up a Committee. By so doing this court would not be asking Government to exercise their discretion in any particular manner or in any particular way; but it is needless to mention that Government are bound to use their discretion in good faith, and not arbitrarily or capriciously, in which case the remedy will be open to the aggrieved party.

Mandamus issues secure the performance of a public duty, including a duty to exercise a discretion or to determine a matter within the jurisdiction of the competent tribunal--

(See Judicial Review of Administrative Action by S. A. de Smite, Page 206.)

Applying these principles, I have no doubt whatever, that mandamus can and must issue to the respondent, to exercise the discretion vested in it and decide whether a Committee should not be set up to revise the rates. It was stated for the respondent, that a Bill had been passed by the legislature abolishing "Jenmikaram" and sent up for the President's sanction; this was a few months ago, and sanction is still being awaited. The learned Government Pleader agreed, that this by itself cannot debar this court from issuing a writ of mandamus. However, a further period of three months" waiting may not substantially prejudice the cause of the petitioners. I therefore order, that in case the President's sanction is not obtained within three months from today, mandamus will issue directing the respondent to exercise the discretion vested it u/s 46 of the Act and the Rules referred to above and decide whether a Committee, as contemplated by the Act, should not be constituted. Even after the disposal of the earlier original petition, the respondent had been postponing a good deal and therefore in allowing this petition, I order the respondent to pay the costs of this petition, including advocate's fee Rs. 150/-.