

(1961) CriLJ 200
Bombay High Court (Nagpur Bench)

Case No: None

The State of
Maharashtra

APPELLANT

Vs

The Nagpur Electric
Light and Power Co.
Ltd. and Another

RESPONDENT

Date of Decision: Dec. 19, 1960

Acts Referred:

- City of Nagpur Corporation Act, 1948 - Section 152
- Criminal Procedure Code, 1898 (CrPC) - Section 94
- Penal Code, 1860 (IPC) - Section 420

Citation: (1961) CriLJ 200

Hon'ble Judges: Tarkunde, J; Tambe, J

Bench: Division Bench

Judgement

Tarkunde, J.

These criminal references arise from. 19 criminal cases filed by the Nagpur Municipal Corporation against the Nagpur Electric Light and Power Company, limited, hereafter referred to as the Company, for alleged evasion of octroi dues. In all the cases the Company is accused of offences u/s 152 of the City of Nagpur Corporation Act, 1948, and in some of them u/s 420, Indian Penal Code.

2. On 18-12-1959 the Municipal Corporation filed a list of witnesses to whom summonses were to be issued and the list included the store keeper of the Wardha branch of the Company and the Assistant Accountant of the Company at Nagpur, both or whom were cited only for the production of certain documents and records belonging to the Company. Summonses were accordingly ordered to be issued by the learned trial Magistrate. The Company then applied to the learned Magistrate for the withdrawal of the summonses on the ground that they violated the protection against self-incrimination guaranteed by

Article 20(3) of the Constitution. The objection having been overruled by the learned trial Magistrate, the Company went in revision to the Sessions Court, Nagpur, and the learned Additional Sessions Judge, who heard the revision application, has made these references to this Court, recommending that the objection raised by the Company should be accepted and that the summonses to the Store Keeper and the Assistant Accountant be ordered to be withdrawn.

3. It is common ground that the direction contained in the summonses, calling upon the Company's officers to produce certain documents was made u/s 94 of the Criminal Procedure Code. If such a direction were given to a person accused of an offence, the direction would violate the protection against testimonial compulsion guaranteed by Article 20(3) of the Constitution. Article 20(3) provides that "No person accused of any offence shall be compelled to be a witness against himself". In the case [M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others](#), the Supreme Court observed that "To be a witness" is nothing more than "to furnish evidence", and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes". It is thus clear that to produce a document in a criminal case in support of a prosecution is a testimonial act. If an accused person can be summoned u/s 94 of the Criminal Procedure Code to produce documents likely to incriminate him in the course of a trial of an offence alleged to have been committed by him, his refusal to produce the documents would be punishable u/s 175 of the Indian Penal Code, or by committing him for contempt of Court. It must therefore follow that Article 20(3) of the Constitution prohibits a summons to be issued u/s 94 of the Criminal Procedure Code against an accused person, inquiring him to produce documents in support of the prosecution case. A similar view was expressed by a Division Bench of the Allahabad High Court in [R.C. Gupta Vs. The State](#), .

4. In the present cases the Store Keeper and the Assistant Accountant of the Company are not themselves the accused, but the documents which they are asked to produce belong to the Company which is the accused. u/s 131 of the Evidence Act the Company can object to its own employees producing its documents in Court without its consent, if the Company itself cannot be compelled to produce them. It must therefore follow that if the Company cannot be required by virtue of Article 20(3) of the Constitution to produce those documents, the summonses issued against the Company's employees requiring them to produce the Company's documents would be invalid.

5. It is, however, urged by the learned Special Government Pleader on behalf of the State and by Mr. Saranjame on behalf of the Municipal Corporation, that the protection against testimonial compulsion which is available under Article 20(3) of the Constitution to natural individuals, is not available to companies and other corporate bodies, and that the summonses issued to the Company's officers are therefore valid. We are unable to accept this argument. Article 367 of the Constitution provides that "Unless the context otherwise requires, the General Clauses Act, 1897, shall ... apply for the interpretation of this Constitution..." Section 3(42) of the General Clauses Act says that the word "person"

shall include any company or association or body of individuals whether incorporated or not. It follows that the word "person" occurring in Article 20(3) must, unless the context otherwise requires be deemed to include companies, and unincorporated bodies. We do not find that the context in which the word "person" occurs in Article 20(3) requires that the word should be limited to natural individuals. It is true that a company as such cannot give oral evidence in any case but the expression, "to be a witness" has been interpreted to mean "to furnish evidence" and a company is certainly capable of furnishing documentary evidence against itself. It is also clear that a summons issued u/s 94 of the Criminal Procedure Code is in the nature of coercive process, even when it is issued against a company. There is no reason why a company, supposing it resolves to disobey a summons issued u/s 94, cannot be fined for contempt of Court. At any rate, the company's officers who refuse to produce documents in response to a summons u/s 94, are liable to be committed for contempt, and the necessity of avoiding that consequence would amount to a compulsion on the company to obey the summons. Since the context does not require that the word "person" in Article 20(3) should be interpreted otherwise than as provided by Section 3(42) of the General Clauses Act, we are of the view that the protection of Article 20(3) is available not only to natural individuals but also to companies.

6. Our attention was drawn to a number of American decisions in which it was held that the protection against self-incrimination contained in the 5th Amendment of the American Constitution does not extend to corporate bodies. The leading case on the point is *Hale v. Henkel* (1905) 50 Law Ed. 652: 201 US 48. In that case it was observed in the course of the majority judgment delivered by Mr. Justice Brown:

Conceding that the witness was an officer of the corporation under investigation, and that he was entitled to assert the rights of the corporation with respect to the production of its books and papers, we are of the opinion that there is a clear distinction in this particular between an individual and a corporation and that the latter has no right to refuse to submit its books and papers for an examination at the suit of the state.

The reason for the distinction was stated to be that an individual receives nothing from the State beyond the protection of his life and property, whereas a corporation is the creature of the State and holds its special privileges and franchises subject to the laws of the State. This decision was followed in other cases of the Federal Supreme Court, including *Wilson v. United States* (1910) 55 Law Ed. 771 : 221 U. S. 361. The principle enunciated in *Hale v. Henkel* (1905) 50 Law Ed. 652, did cover the case of unincorporated bodies. The question whether an unincorporated labour union could claim the privilege against self-incrimination contained in the 5th Amendment arose before the Federal Supreme Court in *United States v. White* (1943) 322 U. S. 694. It was held that unincorporated bodies cannot, as a rule, claim that privilege. It was observed in the course of the judgment in that case:

The reason underlying the restriction of this-constitutional privilege to natural individuals acting in their own private capacity is clear. The scope-and nature of the economic activities of incorporated and unincorporated organizations and their representatives demand that the constitutional power of the federal and state governments to regulate those activities be correspondingly effective. The greater portion of evidence of wrong doing by an organization or its representatives is usually to be found in-the official records and documents of that organization. Were the cloak of the privilege to be thrown-around these impersonal records and documents, effective enforcement of many federal and state laws would be impossible.

7. The above observations show that the main-reason why the American Supreme Court excluded associations from the protection against self-incrimination was that the privilege would make it impossible to enforce federal and state laws in respect of these bodies. No such apprehension exists, in Indian Law. As pointed out by our Supreme Court in [M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others](#), a power of search and seizure is not subjected by our Constitution to any limitations such as are found in the 4th Amendment of the American Constitution. Consequently, the refusal of a company or other body to produce documents in response to an order of a-Court will not preclude the documents being searched for and seized in pursuance of appropriate legal provisions, like the one contained in Section 96 of the Criminal Procedure Code.

8. Our attention was also drawn to a case decided by the Court of Appeal in England where a view contrary to the current American opinion was accepted. In *Triplex Safety Glass Co. v. Lance-ŕ½aye Glass (1934) Ltd.* (1939) 2 All ER. 613 a question arose whether a corporation which was sued for libel can refuse to answer interrogatories on the ground that the answers would tend to incriminate it. It was urged before the Court of Appeal that the corporation could not be indicted for a libel, and further that even supposing a corporation could be so indicted, it was not entitled to rely upon the privilege against self-incrimination. The Court of Appeal rejected both the contentions and held that a corporation can be indicted for libel and also that the privilege against self-incrimination was not limited to natural persons and could be taken advantage of by a corporation. On the latter point *du Parc L.J.*, delivering the judgment of the Court, observed:

It is true that a company cannot suffer all the pains to which a real person is subject. It can, however, in certain cases, be convicted and punished, with grave consequences to its reputation and to its members, and we can see no ground for depriving a juristic person of those safeguards which the law of England accords even to the least deserving of natural persons. It would not be in accordance with principle that any person capable of committing, and incurring the penalties of, a crime should be compelled by process of law to admit a criminal offence

9. In view of this divided opinion, in view further of the definition of the word "person" in the General Clauses Act and also because we are unable in the absence of an adequate reason to allow a restriction of the scope of a fundamental right, we have come to the

conclusion that the protection against self-incrimination is available to companies as much as to natural individuals.

10. Accordingly, these references are accepted and the learned trial Magistrate is directed to withdraw the summonses issued to the Store Keeper and the Assistant Accountant of the Company. This order will not prevent action being taken according to law for the search and seizure of the documents required in these cases.