Gram Panchayat, Sawargaon Vs Jamnaprasad Raghunath Prasad

Court: Bombay High Court

Date of Decision: April 4, 1967

Acts Referred: Bombay Village Panchayats Act, 1958 â€" Section 162(1), 163, 164, 164(2), 45
Cattle Trespass Act, 1871 â€" Section 4
Central Provinces and Berar Industrial Disputes Settlement Act, 1947 â€" Section 41
Central Provinces and Berar Local Government Act, 1948 â€" Section 49

Citation: (1967) 69 BOMLR 801 : (1968) 1 LLJ 222 : (1968) MhLj 71

Hon'ble Judges: N.L. Abhyankar, J; D.B. Padhye, J

Bench: Division Bench

Judgement

Abhyankar, J.
By this petition under Art. 227 of the Constitution, the petitioner, gram panchayat, Sawargaon, seeks quashing of the orders

of the district industrial court and the State industrial court. The State industrial court by its final order has declared that the change made by the

petitioner panchayat in altering the pay and emoluments of Jamnaprasad (respondent 1) is an illegal change within the meaning of S. 41 of the

Central Provinces and Berar Industrial Disputes Settlement Act, 1947. The facts giving rise to this petition may now be briefly stated.

2. Jamnaprasad was employed as a pound keeper by the janpad sabha, Katol. Janpad sabha was a local authority constitute under the Central

Provinces and Berar Local Government Act, 1948, in the old State of Madhya Pradesh. These local Governments continued to function even after

the reorganization of the State until the pattern was changed by the Zilla, Parishads Act. Under S. 49 of the Central Provinces and Berar Local

Government Act, establishment and maintenance of cattle-pounds was one of the compulsory functions to be performed by the janpad sabha.

Accordingly a cattle-pound was maintained by the janpad sabha, Katol, at village Sawargaon up to 1959. The new State of Bombay passed an

Act called Bombay Act 3 of 1959, the Bombay Village Panchayats Act, 1958. On the coming into force of this Act in the Vidarbha region all the

existing panchayats constituted under the Central Provinces and Berar Panchayats Act are deemed to have been constituted panchayats under the

new Bombay Act. Thus the petitioner-panchayat became a panchayat constituted under the Bombay Village Panchayats Act. Under the Bombay

Village Panchayats Act every gram panchayat is required to appoint a place within the local limits of its jurisdiction to be a public pound and to

appoint a keeper of such pound and the person to be appointed as keeper must be approved by the District Magistrate. Elaborate provisions are

made regarding the establishment and functions of the cattle-pound in Chap. XIII of the Bombay Village Panchayats Act. We shall have occasion

to refer to these provisions a little later. In view of the coming into force of these provisions of the Bombay Village Panchayats Act, it was obvious

that the cattle-pound at village Sawargaon could only function under the control of the janpad sabha, Kotal, but stood transferred, or had to be

transferred, to the control and management of the gram panchayat at Sawargaon. Then a question arose as to service of the pound keeper who

was already employed for the cattle-pound at Sawargaon. The janpad sabha as well as the panchayat seemed to have been advised by the local

authority to arrive at some understanding in respect of the pound-keepers. In pursuance of this directive, a conference seems to have been held on

26 November, 1959, between the members of the janpad sabha, Katol, and the office-bearers of the petitioner gram panchayat and it was

decided that the cattle-pound at Sawargaon shall stand transferred for management and control to the gram panchayat at Sawargaon, that is, the

petitioner, from 1 December, 1959. It was further agreed that whosoever was working and employed in the cattle-pound would continue to do so

under the control and management of the appropriate village panchayat. In pursuance of this agreement, the services of Jamnaprasad (respondent

1) stood transferred to the petitioner gram panchayat and he became an employee of the petitioner gram panchayat. It is also clear that at the

relevant time when Jamanaprasad''s services stood transferred, he was drawing a substantive pay of Rs. 10 per month and a dearness allowance

of Rs. 40 per month. In all, he was getting Rs. 50. This was also apparently agreed to by the successor authority, namely, the gram panchayat of

Sawargaon, the petitioner.

3. It is the case of the petitioner that it was getting a reimbursement to the extent of Rs. 20 out of the dearness allowance of Rs. 40 payable to

respondent 1 from the Government till 1962 and on that footing it had agreed and continued to pay respondent 1 his emoluments comprising

substantive salary of Rs. 10 per month and dearness allowance of Rs. 40 per month. But later on, State Government refused to make any

contribution towards the dearness allowance of respondent 1 and, therefore, the petitioner decided, by resolution of 5 September, 1962, that

thereafter he should be paid Rs. 10 as substantive salary and Rs. 20 per month as dearness allowance. In other words, obviously there was a

change in the conditions of service in the matter of dearness allowance brought about by the petitioner in respect of Jamnaprasad.

4. Jamnaprasad, therefore, made an application purporting to be an application under S. 41 of the Central Provinces and Berar Industrial Disputes

Settlement Act to the district industrial court on or about 24 June, 1963. A copy of the application has been filed with the petition as annexure 5.

The compliant of Jamnaprasad was that the alteration in his salary amounts to an illegal change within the meaning of S. 41 of the Central Provinces

and Berar Industrial Disputes Settlement Act and, therefore, a declaration should be given to him to that effect. In making this application, it is

necessarily implied that the application was made by an employee against an employer within the meaning of the Central Provinces and Berar

Industrial Disputes Settlement Act.

5. The application was resisted by the petitioner before the district industrial court on various grounds. One of the grounds raised was that the

petitioner is not an ""industry"" within the meaning of the Central Provinces Act. This contention succeeded before the district industrial court and that

court dismissed the application of Jamnaprasad as not tenable. Jamnaprasad preferred an appeal before the State industrial court and the State

industrial court reversed the finding of the district industrial court and held that the petitioner was an ""industry"" within the meaning of the Central

Provinces and Berar Industrial Disputes Settlement Act and, therefore, was liable to be proceeded against by an application under S. 41 of the

local Act. There is no doubt that if the petitioner is an ""industry,"" then there has been made a change in the conditions of service of respondent 1

and that change could be challenged as an illegal change to the determent of the interests of respondent 1 under S. 41 of the Central Provinces and

Berar Industrial Disputes Settlement Act.

6. Thus, the crucial and the interesting question that has arisen in this case is whether the petitioner, that is, the village panchayat, Sawargaon,

deemed to be a panchayat under the Bombay Village Panchayats Act is an ""industry.

7. Relying heavily on the two decisions of the Supreme Court in The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others,]

and The Corporation of the City of Nagpur Vs. Its Employees, , it is urged on behalf of respondent 1 that a village panchayat is a local authority

just as a consideration of a city is a local authority rendering services to the corporation and an employee employed in any of the departments of

such authority must be held to be an employee employed in an ""industry."" The activities of the panchayat, being in the nature of rendering services

to the community, are an ""industry"" according to the interpretation put on that word in the Supreme Court decisions and, therefore, the finding of

the State industrial court is not liable to be disturbed. In order to examine this contention, it is necessary to find out the scheme with respect to

which activity this claim can be made.

8. At a very early stage a statute called the Cattle Trespass Act, 1871, came to be put on the statute book of this country. The Act made

provisions for establishment of cattle-pounds and appointment of pound-keepers which was enjoined as a statutory duty on a magistrate of the

district under S. 4 of the Cattle Trespass Act. Then a cultivator or an occupier of any land or any person or a specified person was given the right

to seize any cattle trespassing on such land and doing damage thereto or to any crop or produce thereon and to send them to the pound

established for the village in which the land is situate. Persons in charge of public roads, pleasure-grounds, plantations, canals, etc., and officers of

police have also been empowered to seize or cause to be sized any cattle doing damage to such roads, grounds, plantations, canals, etc., and

impound them. A fine is required to be paid for impounded cattle before they can be released besides the charges for their maintenance. If no claim

is made within the prescribed period by the owner of the cattle for release of the cattle, a power is vested in the authority to sell the impounded

cattle after the prescribed period and it is only sale proceeds of the cattle that to owner of the cattle is thereafter entitled to claim. Prosecution is

possible against the owner of cattle whose cattle are shown to have trespassed and caused damage to any land or any crop or produce of a

citizen. Thus, a complete scheme is provided for preventing nuisance of cattle trespass and damage to crops or other things by cattle straying and

for maintenance of order in respect of all matters connected with seizure, impounding, release and disposal of cattle.

9. After coming into force of the Bombay Village Panchayats Act, 1959, the duty of establishing and maintaining cattle-pounds has been imposed

now on village panchayats and to that extent, the provisions of the Cattle Trespass Act, 1871, cease to operate within the area in the jurisdiction of

a village panchayat established under the Bombay Village Panchayats Act. Chapter XIII of the Bombay Village Panchayats Act makes all the

necessary provisions in this respect. Under S. 162(1), as we have already referred, a duty is cast on a panchayat to appoint public pounds and

also to appoint keepers of such pounds called the pound-keepers. Under S. 163 any person allowing his cattle to trespass upon any private or

public property is liable to be fined on conviction before a magistrate. Under S. 164, it is the duty of the police officer and a watch and ward

appointed by the panchayat and a private citizen is also enable to seize and take to any public pound for confinement therein, any cattle found

straying in any street or trespassing upon any private or public property within the limits of the village. Forcible opposition to the seizure of such

cattle, or rescuing such cattle after they are legally seized, is also made punishable under S. 164(2). The cattle impounded lawfully can be released

by the pound-keeper on payment of the pound-fees and expenses chargeable according to the rules. If within ten days after any cattle have been

impounded, any person appearing to be the owner of such cattle offers to pay the pound-fees and expenses, the cattle have to be released

forthwith. But if such an owner does not come forward, then power is given to sell the cattle by public auction and thereafter it is only to the sale

proceeds of such auction that the owner of the cattle is entitled. The prescribing of pound-fees chargeable is a function vested in the State

Government according to the notification to be published in the gazette. If there is any compliant of illegal seizure of cattle, such a complaint can be

made before a magistrate and on being proved, the person guilty of illegal seizure is liable to be fined. Rules have been made for administration of

those provisions of the Bombay Village Panchayats Act and under these rules the sarpanch has been charged with certain duties as to

determination of remittance of pound-fees or as to the manner and time when an impounded cattle may be sold by auction.

10. The question that thus falls for determination in this petitions is whether this activity required to be carried on by village panchayat can be called

an ""industry"" within the meaning of the Central Provinces and Berar Industrial Disputes Settlement Act. The learned counsel for the respondent-

employee has relied upon some tests which should govern determination of such question. According to the recent decisions of the Supreme Court

in The Corporation of the City of Nagpur Vs. Its Employees, and Hospital Mazdoor Sabha case 1960 - I L.L.J. 251 (vide supra), it would appear

that in order that an activity undertaken by an employer could be considered as an ""industry"" it would be necessary to see whether the activity by

its form and organization in relation to the employed labour force, is an active and creative agent for achieving fruits of the activity, namely,

production of material goods or for the service to the community. According to the contention of respondent 1, the whole purpose of a village

panchayat organization is for rendering various welfare activities for the benefit of the citizens within its area. The administrative powers and duties

of the panchayat, which, it is entitled to exercise under S. 45 of the Bombay Village Panchayats Act and for which a village fund is constituted and

placed at its disposal, are shown in Sch. I attached to the Act and the various kinds of duties which are included in this schedule would show that

most of them are for rendering one kind of service or other to the community at large. A question whether the duty of establishing pounds and

keeping pound-keepers for purposes of Chap. XIII of the Bombay Village Panchayats Act is one of such welfare activities, has to be decided not

by reference to the general provisions of the Act but the scheme under our laws relating to the duty of the State to maintain and keep cattle-pounds

as envisaged in different legislations.

11. The other test that may be well required to be satisfied before an activity can be called an ""industry,"" is whether a similar activity can be

performed by any other private individual. In The Corporation of the City of Nagpur Vs. Its Employees, detailed examination was made with

respect to different activities of the municipal corporation department by department and it will be seen that one of the crucial tests applied in each

case was whether the function carried on in a particular department by the corporation could be carried on by private individual or group of

individuals. This, in our opinion, is the second test, which an activity must satisfy before it can answer the description of being an ""industry"" within

the meaning of the Central Provinces and Berar Industrial Disputes Settlement Act.

12. With regard to the first test, namely, whether there is co-operation of labour and capital for the benefit of the community, the learned counsel

for the respondent has urged that such co-operation is implicit when anybody is appointed as pound-keeper for supervising the cattle-pound and

the services which are rendered to the community by establishing cattle-pound are in the form of providing an authorized place where the cattle

causing damage or trespass can be impounded and thus kept free form further mischief. In a sense, every activity of a public authority must

necessarily imply rendering of some kind of service. Thus the whole police department which ensures protection, safety and liberty to the subject

does render a kind of service during 24 hours of its functioning, but on that account it cannot be said that the department connected with the law

and order, such as police is, is engaged in an activity for rendering services to the community in which the concept is understood in a legislation

relating to industrial relations. Whether or not a service or benefit rendered to community is paid for directly, service rendered to the community

must be of a nature which even if not carried out will not unduly interfere with the normal tenor of life. In other words, if the services which are

required to be carried out are essential activities of an authority, then it cannot be said that merely because some advantage is undoubtedly reaped

by such activity, it would satisfy the test of being an ""industry."" In our opinion, the statutory duty cast on a public authority of maintaining and

keeping cattle-pounds is a duty which is more intimately connected with the duty of the State to prevent nuisance and is a branch of the activity

relating to law and order. We will consider separately the question whether any private person is entitled or will be in a position to establish a

private cattle-pound because this is the other test which has to be satisfied according to the decision of the Supreme Court. But here, we are

principally concerned with the nature of the function exercised by a village panchayat where it establishes a cattle-pound in obedience to the

mandate of the legislature in S. 162 and other cognate sections in Chap. XIII of the Bombay Village Panchayats Act. Initially, under the Cattle

Trespass Act, 1871, this duty was imposed on the magistrate of the district. The magistrate of the district was required under S. 4 of the Cattle

Trespass Act, 1871, which was an all-India statute, to establish cattle-pounds at such places as may be desired from time to time. It would be

difficult to hold that where the Cattle Trespass Act still operates, this activity of the District Magistrate is in the nature of carrying on an ""industry.

As a magistrate of the district, the law imposed on him a duty to make provision for a place of safety where the cattle which are found to have

committed nuisance are to be impounded. A cattle-pound, in a sense, can be compared to a prison where the offending cattle are placed under the

control of a pound-keeper both for the purpose of preventing them from further mischief and also for providing a solatium to the persons who have

suffered damage on account of trespass and damages caused by the offending cattle. A somewhat similar question came up for examination before

the privy Council in a very old case in Bir Bikram Deo Vs. The Secretary of State for India in Council, . In that case, a group of non-feudatory

zamindars in the Central Provinces, commenced a suit claiming a right retain and set up cattle-pounds within the boundaries of their zamindaris.

Their non-feudatory character was determined by the Government in 1864 and from that time, they were treated as ordinary subjects. After

determining their status as such, sanads were granted to these ex-non-feudatory zamindars granting proprietary rights in soil only in respect of the

lands in their possession and their independent powers analogous to possession of sovereign rights were not recognized. From time to time

thereafter their powers for police and excise administration and also the rights exercised in respect of cattle-pounds were withdrawn after the

settlement operations were completed. The claim of these ex-zamindars, therefore, in the suit brought by them against the Secretary of State was

that they had been illegally deprived of their rights and among them, they claimed a right to set up cattle-pounds. With regard to the claim to cattle-

pounds, the Secretary of State contended that the plaintiff or his ancestors had no right or privilege against the Government with regard to the

cattle-pounds within the zamindari, that the exercise of jurisdiction in this matter by the plaintiff or his ancestors was entirely at the pleasure of the

Government and that the resumption of cattle-pounds was not only not illegal, but was perfectly legal under the provision of the Cattle Trespass

Act, 1871. The plaintiff also could not claim income from pounds after resumption of the same by the act of State and thus the suit in this respect

also was not tenable. The District Judge, who upheld the defence so far as this issue was concerned, observed that under the Cattle Trespass Act,

the pounds are to be under the control of the District Magistrate to be established at such places subject to the control of the local Government

from time to time. He rejected the argument of the plaintiff that the Act did not prohibit continuance of cattle-pounds other than those sanctioned

by the District Magistrate. The learned Judge took the view that the provisions of the Cattle Trespass Act, by necessary implication, did prohibit

setting up of cattle-pounds of their continuance by private individuals. This was because the plaintiff or any other owner of private cattle-pound

could not detain the cattle of other persons and could not levy any fines and if he did, he would render himself liable both under the civil and

criminal law.

13. There was an appeal to the Judicial Commissioner in these provinces. The appeal succeeded in Judicial Commissioner"s Court and that Court

held that the plaintiff was entitled by virtue of the grant from the Government to maintain pounds in his zamindari and to receive the fees levied

therein, but the appeal failed on other matters and the matter was taken before the Privy Council. With respect to the right regarding the cattle-

pounds, their lordships observed as follows (p. 826) :

Their lordships are disposed to think that the maintenance of private cattle-pounds is incompatible with provisions of the Cattle Trespass Act, and

they are of opinion that under the circumstances the establishment and maintenance of cattle-pounds under the superintendence and control of

Government officials employed to obtain the assistance of the police when required may be considered essential for the maintenance of law and

order, and peace and good government of the country, and therefore an act of the Executive Government with which it is not competent for the

civil Court to interfere.

14. The learned counsel for the petitioner relies on these observations in support of his contentions that the maintenance of cattle-pounds is one of

the essential Government functions because it was intimately connected with the maintenance of law and order and the peace and good

government and may also partake of the nature of the right intimately connected with the sovereign power of the State. Whether or not, it could be

claimed as exercise of sovereign power, there is no doubt that the maintenance of cattle-pounds under the statutory obligations is one of the

essential functions of the Executive Government for the maintenance of law and order. Cases frequently come before Courts of nuisance, breach of

right and peace on account of straying of cattle and disputes arising from illegal seizure of cattle. It is for this purpose, that legislation has advisedly

invested public authorities with the function in maintaining cattle-pounds and their control. The fact that now under the new disposition with the

decentralization of the powers of the State Government, these functions are entrusted to the local bodies like the janpad sabha under the Local

Government Act, or the municipal authorities in urban areas and the village panchayats under the Bombay Village Panchayats Act, is in no way

derogatory to the position as to the character of the power which is vested in these authorities so far as the activities relating to prevention and

control of cattle trespass is concerned. One of the arguments urged in this respect was that if the majority of functions undertaken or carried on by

the panchayat are welfare functions, as they must necessarily be, then this is one of the activities amongst various functions required to be

undertaken by the village panchayat and if the principal nature of the functions carried on by the panchayat is in the nature of welfare activities, the

activity in relation to the cattle-pounds should not be excluded from that category. We are unable to accept this contention in the form it is

presented. Even a village panchayat is required to undertake some of the governmental functions and to that extent, it will not be possible to hold

that the activities in respect of those functions are activities amounting to an ""industry."" We must, therefore, hold that this is one of the essential

governmental functions which was entrusted to the village panchayat under the provisions of the Bombay Village Panchayats Act and this activity,

at any rate, could not be said to answer the character of an activity analogous to that of an ""industry.

15. In our opinion, the second test also fails in this case because it is not possible to conceive of a private citizen establishing a private cattle-pound

as observed by the Privy Council. The very fact that the duty to establish cattle-pound is statutorily imposed on public authorities must be

considered to imply a bar to other persons to set up a cattle-pound. Difficulties which would arise if such a right were recognized are not difficult to

imagine. It is because of the police assistance that is given to the pound-keeper in respect of seizure of cattle, their impounding and their sale that

proper and smooth administration of cattle-pound is possible. The help of police can be taken for seizing straying or trespassing cattle and even

any citizen is entitled to seize cattle trespassing upon public lands or property of individuals which right can be exercised only so long as the seized

cattle can be taken to a public cattle-pound. Otherwise, if private pounds are held permissible under the law, it will open door to numerous flights

leading to conflicting claims and perhaps also to breach of peace, for prevention of which the institution of ""public pounds"" seems to have been

treated as an activity of the State or other limb of the State. We must, therefore, hold that, by necessary implication, a private citizen is not entitled

to have his own pounds or to claim the right to impound the offending cattle of other citizens in a private pound. Any head of cattle found

committing a nuisance or trespass or damage has necessarily to be taken to a public pound established according to the area in which the offence

or mischief takes place. That being the position, we do not think that the activity carried on by the village panchayat satisfies either of the two tests

laid down and therefore, it is not possible to hold that respondent 1 was employed in an activity which has any resemblance to an ""industry"" carried

on by the petitioner. Differing from the State Industrial court, therefore, it must be held that respondent 1 was not entitled to make an application to

the district industrial court, as he was not an employee of the petitioner, an employer within the meaning of as the Central Provinces and Berar

Industrial Disputes Settlement Act.

16. The result is the petition is allowed and respondent 1''s application is liable to be dismissed an not tenable, but, in the circumstances, there will

be no order as to costs.