

(1971) 07 OHC CK 0025

In the Orissa High Court

Case No : Second Appeal No. 25 of 1968

Bhagaban Chandra Behera

APPELLANT

Vs

Ranasahi Grama Panhayat and Another

RESPONDENT

Date of Decision : 28-07-1971

Acts Referred:

Orissa Grama Panchayat Act, 1948 — Section 49A, 49A(1)

Citation : (1971) 37 CLT 951

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : R.N. Das and P.K. Das, for the Appellant; R.N. Sinha and S.M. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—The Plaintiff is in appeal against the confirming decision of the learned District Judge of Balasore. He sued for cancellation of a certificate issued under the Orissa Public Demands Recovery Act, 1962. That certificate case had been started for recovery of licence fee at the rate of Rs. 25/- for the years 1958-59 to 1962-63, on the ground that the Plaintiff, though liable to take a licence u/s 49-A of the Orissa. Grama Panchayat Act of 1948 in respect of running of a huller within the jurisdiction of The Grama Panchayat, had committed to do so and bad run the huller. The Plaintiff contended that he had no liability for taking out of a licence because there was no valid notification for levy of a licence fee and that he having not taken a licence the fee was not payable.

2. The defence of the Grama Panchayat was that there had been a valid demand and on account of default the licence fee was realisable as a public demand.

3. The Courts below have negatived the Plaintiff?s contention and have found that the certificate is valid.

4. Mr. Das in Second Appeal reiterated the two contentions. There is no dispute

that the Plaintiff has been running hulla within the jurisdiction of the Defendant Grama Panchayat u/s 49-A(1) of the Orissa Grama Panchayat Act for such purpose a licence is necessary. There is a notification of the State Government dated 20.2.1951 in the L.S.G. and Co-operative Department to the following effect:

I am directed to say that Government have been pleased to accord their previous sanction in pursuance of Sub-section (I) of Section 49-A of the Orissa Grama Panchayat Act, 1948 (Orissa Act XV of 1948) and to direct that an the Grama Panchayat within your jurisdiction may notify that no place within the local areas of the respective Grama Sabhas shall be used without a licence granted by them, except in accordance with the conditions specified in such licence for one or more of clauses mentioned from "a" to "x" under the said sub-section of the said section. Licence fees may be levied within the maximum prescribed by Government in notification No. 1263-L-S-G dated the 8th November 1950.

The present levy of the licence fee is in terms of the limits fixed by the Government. Mr. Das relied upon an authority of this Court in Rathor and Ors. v. Jharipara and Balugaon G.Ps. 1960 C.L.T. 483. On reference to that decision it transpires that the parties before this Court in that case had failed to provide the notification in question and in the absence of any such notification the Court presumed that there was no valid levy of licence fee. In view of this notification the objection of Mr. Das must be overruled, and the authority of this Court in the said decision cannot be applied to the facts of the present case.

5. There is hardly any merit in the second contention of Mr. Das. Licence fee is payable in respect of a licence to be granted under the Act. If the Plaintiff omits to take a licence though he is bound to, it is not open to him to contend that as a licence has not been issued the licence fee is not payable by him. The real purpose is to realise a fee in respect of the prescribed matter. Issue of the licence is clerical and merely because it has not been issued though it is admitted that the Plaintiff has utilised some land within the prohibited area without a licence it cannot be held that the fee is not payable. There is no merit in this appeal and it must be dismissed. Some money is in deposit in the trial Court pursuant to an interim order in this Second appeal. On an application made by the parties the learned Trial Judge would direct its adjustment.

6. I do not propose to award costs against the Plaintiff though normally in the facts of such a case costs should have followed the event. The Grama Panchayat failed to produce the notification in the Courts below and therefore, the Plaintiff was persuaded to carry the matter up to this Court on the basis of the aforesaid reported decision. Parties would, therefore, bear their own costs.