

(1962) 02 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 160 of 1961

Bhaskar Moharana

APPELLANT

Vs

Arjun Moharana and Others

RESPONDENT

Date of Decision : 11-02-1962

Acts Referred:

Constitution of India, 1950 — Article 16, 16(2)

Citation : AIR 1962 Ori 167 : (1962) 28 CLT 316

Hon'ble Judges : R.L. Narasimham, C.J; Barman, J

Bench : Division Bench

Advocate : H.G. Panda and S.K. Panda, for the Appellant; Govt. Advocate and A.K. Tripathy, for the Respondent

Final Decision : Dismissed

Judgement

Narsimham, C.J.—This is a petition under Article 226 Of the Constitution against the order of the Collector of Ganjam in Village Officer's Appeal No. 1 of 1956 dismissing a suit brought by the petitioner u/s 13 of the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895) hereinafter referred to as the Act for recovery of possession of a black-Smith inam lands in villages Bhimpur and Pandrakhalli in Ganjam district where the provisions of the Act are still in force.

2. The said ground on which the Collector dismissed the suit as non-maintainable was that in view of the recent decision of the Supreme Court in Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others, , the hereditary principle on which succession to the inam lands attached to a village office was regulated under the Act, offended Article 14 of the Constitution, and as such it was void. Mr. Panda for the petitioner however urged that the said decision related to the office of Village Munsif which was fundamentally different from the office of village blacksmith and that consequently it would not apply here. This is the main point for decision in this writ application.

3. The preamble to the Act says that the object of the Act is:

"To provide more precisely for the succession to certain hereditary village-offices .. for the hearing and disposal of claims to such offices or the emoluments annexed thereto; for the appointment of persons to hold such offices and the control of the holders thereof; and for certain other purposes."

The various, classes of village offices to which the Act applied, are described in detail in Section 3 of the Act which consists of four sub-sections: Sub-section (1) deals with Village Munsifs, Karnams, Talayaris, etc. Sub-section (2) and subsection (3) are not material for our purpose. Subsection (4) refers to the hereditary office of village artisans like the Village Carpenter, Village Blacksmith, the village Barber, Village Washer-man, the Village Potter etc. Section 4 defines the expression "Emoluments" as including any lands granted or annexed to any such office by the State. Section 5 prohibits the alienation by any Court. Sections 4 and 5 are thus general sections applicable to all classes of village offices described in Sec. 3. Sections 6, 7, 8, 9, 10 and 11 are applicable to village offices of the classes described in Sub-sections (1), (2) and (3) of Section 3 and are not material for our purpose. Section 12 however is directly applicable here and may be quoted in full:

"12. The succession to village offices forming Clause (4) in Section 3 shall devolve in accordance with the law or custom applicable thereto at the date on which this Act comes into force." Section 13 confers on the holder the right of suing before the Collector for any of the village Offices described in Section 3, including the office Of the village artisan and for the recovery of emoluments attached to such office. Sections 14 to 19 contain detailed provisions in respect of such suits but they are not material. Section 20 confers rule-making power on the Board of Revenue in respect of these village, offices; and in Clause (x) of that section it is expressly stated that the Board may make rules in respect "of any other matters calculated to enhance the efficiency of the village service."

4. The petitioner claimed to be the village Blacksmith in respect of the aforesaid two villages and, as such, to be entitled to all the lands annexed to the village blacksmith. From the very definition of the word "Village Office" as given in the Act, it is clear that the petitioner "holds" an office. Clause (x) of Section 20 quoted above also shows that he renders "village service."

5. The Standing Orders issued by the Board of Revenue, Madras, dealing with the subject, may now be referred to. Standing Order No. 55 says that Govt. will not interfere with inams pertaining to Village artisans whose services will be recognised as still necessary to the villagers, namely the barber, carpenter, blacksmith, washerman and potters, unless the lands have been alienated by the incumbent of the office, or there has been persistent default in the discharge of the prescribed services by him, in which case the question of resumption may be taken up by the Revenue authorities. Paragraph (2) of Standing Order 56 further says that if the village service is performed by some other person, the Collector

may assign the assessment of the inam to the working incumbent.

But in the said paragraph two of the same Standing Order it is further stated that before considering the question of resumption the Collector should carefully examine,

"the action taken by the village community on the cessation of service and their wishes as to the continuance or revival of the service and also the wishes of the village community as represented by the village Panchayat, where One exists in the village, as to whether the assessment of inam, after resumption, is to be paid to the working incumbent or credited to the general revenues."

These provisions requiring the Collector to ascertain the action taken by the village community and also their wishes, confirm the view inferable from the provisions of the Act to the effect that these village artisans render valuable service to the village community, and hence may be reasonably held to be holding an office or employment under the village community.

6. As regards the administrative control over these village artisans the Board's Standing Order No. 157(1) is to the following effect:

"157: Appointment, punishment and removal of hereditary and non-hereditary village artisans. Powers of Revenue officers to appoint and punish--When a person on whom a village artisan's office has devolved by legal or customary right makes default in respect of service, the revenue officer cannot ordinarily interfere in order to appoint a successor; nor are revenue officers in general empowered to punish village artisans. Should it be customary, however, for revenue officers in a particular tract or district to appoint and punish village artisans, there is no objection to the custom being followed so long as it works smoothly".

7. It is true that as regards appointment, dismissal, nature of service, etc. there are important differences between village offices of the classes described in Sub-section (4) and those described in Sub-section (1) of Section 3 of the Act. A village Munsif or Karanam is formally appointed by the Revenue Officers who exercise powers of discipline over them and those persons while rendering service to the villagers also render service to the Government either in the shape of collection of Government Revenue in the village or maintenance of village accounts, furnishing periodical statements to the Revenue Officers etc. But I think this is a difference only in detail depending on the nature of the service performed by the holder of the office and not difference in principle. The right to sue for recovery of emoluments of all classes of offices described in Section 3 of the Act, is conferred by Section 13 and in that section there is no distinction between the emoluments of a village artisan and the emoluments of a village Munsif. The administrative control and supervision vested in the Government acting through the Collector is also extensive. For persistent default in the performance of his duties the inam lands of the village artisan may be resumed and full rent assessed or the same may be assigned to the working incumbent.

8. The aforesaid Supreme Court decision has laid down the following principles:

(i) Section 6(1) of the Act in so far as it makes a discrimination on the ground of descent only is violative of the fundamental right in Article 16(2) of the Constitution and is void:

(ii) "Law" as defined in Article 13 includes, custom or usage having the force of law. Therefore, even if, there was a custom recognised by law with regard to hereditary village offices, that custom must yield to a fundamental right guaranteed by the Constitution.

(iii) The expression "office" under the State occurring in Clauses (1) and (2) of Article 16 must be given its natural meaning and it is not limited to an office or post in an organised public office or an ex-cadre post, which are dealt with in Articles 209 and 210 and other articles of the Constitution, (in Chapter I of Part XIV).

(iv) The provisions of Clause (5) of Art. 16 are indicative of the fact that an office in connection with the affairs of any religious or denominational institution would also have come within the scope of Article 16 but for the express saving provision in that clause. This clause thus supports the wide meaning to be given to the word "Office" or "employment" in Clause (1) of the Article.

(v) The expression "State" in Article 16 has a very wide meaning and is not limited either to the State Government or Union Government. Article 12 says that in the Part dealing with "Fundamental rights" the expression "State" includes, apart from Governments "all local and other authorities".

9. In my opinion, the aforesaid principles, would apply with equal force in respect of a village office such as village black-smith, or any other class of village artisans. Though there is ordinarily no formal order of appointment of a person to such a village office, and there is no express statutory power with regard to exercise of disciplinary control over the holder of that office, nevertheless the statute recognises him as performing an important village service for the village community as a whole. Lands have been assigned for the incumbent and they have been described as "emoluments" of office. The alienation of these lands and their attachment by the Civil Court are expressly prohibited, and the right of recovery of the lands by a suit, u/s 13 is common to all classes of village offices described in the Act. Thus even a village blacksmith is undoubtedly a holder of an office or employment as contemplated by Article 16. But the question arises whether it is an office under the State, Though the Government through its Revenue Officers, do not formally appoint or punish village artisans, nevertheless they retain some sort of disciplinary control, as already pointed out. Thus Board's Standing Order No. 55 says that the inam may be resumed if there is wrongful alienation or persistent default in the performance of the prescribed service. Similarly Standing Order No. 157 says that these village artisans may be punished if there is such a custom prevailing in the village. These artisans also render valuable service to the villagers and the village community has a right to

be consulted on special occasions. In view of the wide meaning given to the expression "State" in Article 12, it must be held, in the circumstances, that these artisans also hold an "office under the State" acting through its revenue officials and the village community.

10. From this, conclusion it necessarily follows that Section 12 of the Act in so far as it recognises the hereditary principle for succession to the office of village blacksmith, offends Article 16 of the Constitution. It is true that Section 12 of the Act merely says that succession to the office of blacksmith should be regulated by custom, but as pointed out by the Supreme Court in the case cited above, custom also will be "law" for the purpose of fundamental rights guaranteed by the Constitution. Hence, any law which solely on the basis of descent recognises the right of succession to the office of blacksmith will offend Article 16(2) of the Constitution, and must be declared void to that extent. The petitioner's suit, in which he claimed the lands as emoluments of his office Was based solely on the hereditary principle, namely that the emoluments are impartible and that he, as the son of the previous holder of the office was entitled to the same. His right to the office, and consequently to the emoluments, being based on Section 12 must be held to be non-enforceable as offending Article 16(2) Of the Constitution.

11. It was then contended by Mr. Panda that as the opposite party also claimed a share in the lands on the ground of descent and was actually in possession of the same, it must be held that there was a waiver of the fundamental right and that he was not entitled to raise any objection to the maintainability of the suit on constitutional grounds. It should be noted that the "Opposite party is none else but a cousin of the petitioner who claims to be entitled to possession on half of the black-smithy inam lands on the ground that the property was jointly inherited by his father and by the father of the petitioner. The question of waiver has no application where there is contravention of the fundamental right under Article 16 of the Constitution. In *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, their Lordships of the Supreme Court made it absolutely clear (by a majority) that a fundamental right under Article 14 of the Constitution can never be waived. In *The General Manager, Southern Railway Vs. Rangachari*, their Lordships further pointed out that Clauses (1) and (2) of Article 16 really give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Clause (1) of Article 15, and that all the three provisions form part of the same Constitutional Code Of guarantees and supplement each other. Hence, if Article 14 cannot be waived, Article 16 cannot also be waived for the same reason.

12. Mr. Panda then relied on a decision of the Andhra Pradesh High Court reported in *Venkata Subba Rao v. Ramkrishna Rao* AIR 1958 AP 322 where it was held that a person who derived a benefit under the provisions of the Madras Hereditary Village Office Act could not contend that the Act was unconstitutional. But with great respect the correctness of this decision may be open to some doubt in view of the aforesaid decisions of the Supreme Court which clearly show

that the provisions of Articles 14, 15 and 16 cannot be waived inasmuch as they are commands addressed to the State.

13. I must accordingly hold that the right to sue granted to the petitioner u/s 12 of the Act, based on the customary right of hereditary succession to the office of village blacksmith, is unconstitutional and cannot be enforced in the law courts. Hence it must be held that Section 12 of the Act in so far as it recognises the customary law of succession to a village office solely on the ground of descent is invalid to that extent. As the petitioner's claim to the emoluments was based solely on this customary law it must fail and it was rightly dismissed by the Collector.

The application is therefore rejected, but both parties will bear their own costs.

Barman, J.

14. I agree.