(1976) 02 PAT CK 0021

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1358 of 1975

Chaurasia Brothers and Another — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 25-02-1976

Acts Referred:

Bihar Gram Panchayat Account Rules, 1949 — Rule 54
Bihar Panchayat Raj Act, 1948 — Section 47(1)
Constitution of India, 1950 — Article 265

Citation : AIR 1976 Patna 299

Hon'ble Judges : B.D. Singh, J

Bench : Single Bench

Advocate : G.C. Bharuka, V.P. Singh and Gyanchand Prasad, for the Appellant; S.N. Jha, Standing Counsel No. 2 and Chandra Mohan Jha, J.C. Standing Counsel No. 2, for the Respondent

Final Decision : Allowed

Judgement

B.D. Singh, J.—This is an application by Messrs Chaurasia Brothers and another, filed under Articles 226 and 227 of the Constitution of India for directing the respondents not to collect supplementary taxes u/s 47 of the Bihar Panchayat Raj Act, 1947 (hereinafter referred to as the ''Act'').

2. In order to appreciate the points involved in this application, it would be necessary to state briefly the facts. The petitioner No. 1 is a dealer in foodgrains and oil-seeds and several other commodities, carrying in its business in village Dhandiha, whereas petitioner No. 2 is a petty dealer dealing in oil-seeds and different varieties of pulses. Petitioner No. 2 purchases oil-seeds and pulses from cultivators by moving from place to place and thereafter supplies the same to petitioner No. 1 at its business premises at Dhandiha by bringing the said goods either on horse or on bullock-carts. Petitioner No. 1 mostly makes purchases of foodgrains, oil-seeds and other foodgrains from different dealers, like petitioner No. 2, who bring their goods on different types of vehicles and animals to its

business premises for sale. On the 18th April, 1975, the Mukhiya of Dhandiha Gram Panchayat issued a notice, purporting to act under the powers conferred u/s 47 (c) of the Act, informing the villagers of the Panchayat area that the right to collect taxes on ferry (ferrywalia) shall be settled with the highest bidder. A true copy of the said notice is marked as annexure ''1'' to the petition. In accordance with the said notice, the said right of collecting tax from persons bringing their goods in the Dhandiha Gram Panchayat area was settled with Sri Jairam Singh (respondent No. 3), and since then the respondent No. 3, according to the petitioners, was illegally, forcibly and arbitrarily collecting taxes from the persons who come to sell their goods at the business premises of petitioner No. 1. The petitioners further submitted in their application that the imposition and collection of fee by respondent No. 3 depends on his sweet will and the tax so collected varies between 25 paise to Rs. 4/- for a bullock-cart containing goods for sale. As an illustration, petitioner No. 2 has annexed various receipts of payment of such taxes by him. Those receipts are annexed as annexures 2, 2/1, 2/2 and 2/3 on different dates. They also submitted that no guideline having been provided for, in Section 47 of the Act as to the rate of tax and fees, which could be levied under the said provision, it leads to vesting of an arbitrary power in the Gram Panchayat, and as such the said provisions are bad also for excessive delegation and, in that view of the matter, the said provisions are unenforceable. Due to compulsory imposition and realisation of taxes from petty dealers, most of the petty dealers, who used to bring their goods for sale to petitioner No. 1, have stopped coming to his business premises, thus adversely affecting the business of petitioner No. 1 and, therefore, the action of the respondents amounts to infringement of the petitioners'' right.

3. A counter-affidavit has been filed on behalf of respondent No. 1, namely, the State of Bihar on the 14th January, 1976, wherein, inter alia, it is stated that the Bihar Panchayat Account Rules 1949 (hereinafter referred to as the ''Rules") has come into force from 2nd May, 1949, and Section 47 (1) (d) read with Rule 54 empowers the Gram Panchayat to levy and collect such taxes.

4. Learned Counsel appearing on behalf of the petitioners submitted that neither the said provision contained in the said section nor the rule authorises the Gram Panchayat to delegate its power to a third person and to auction and settle their right to the highest bidder, as in the instant case they have done so with respondent No. 3. He has also drawn my attention to the provision contained under Article 265 of the Constitution of India, which reads thus-

"No tax shall be levied or collected except by authority of law."

He also referred to Section 47 (1) (c) of the Act, which provides.

"Subject to the prescribed rules and any general or special orders of the Government in this behalf ''a Gram Panchayat'' may levy-

(a) xx xx xx (b) xx xx xx (c) a tax on vehicles, pack animals and porters bringing goods for sale into the village."

A reference was also made to Rule 54 of the Rules, which reads thus-

"The Executive Committee at a meeting may, by resolution levy a tax on vehicles, pack animals and porters carrying goods for sale to any market or place belonging to or under the control of the Panchayat or on goods exposed for sale in such market or place at such rate or rates as it may determine.

Provided that the Executive Committee shall while levying such tax take into consideration the nature of vehicles and pack animals carrying the goods and the nature and value of goods carried by such vehicles and pack animals or exposed for sale."

Learned Counsel for the petitioners emphasised that none of the provisions, referred to above, have empowered the Gram Panchayat to sub-delegate their power to a third person on the basis of auction.

5. In my opinion, the submission of the learned Counsel for the petitioners is well founded. The provisions of the Rules, referred to above, no doubt, authorises the Gram Panchayat to levy and collect tax, but it is to be done in accordance with the pro-visions contained u/s 47 (1) (c) and (d) of the Act read with Rule 54 of the Rules. In that view of the matter, issuance of notice contained in annexure ''1'' cannot be sustained. In the result, the notice contained in annexure ''1'' is quashed and respondent No. 3 is restrained from collecting tax on the basis of the said notice or on the basis of the auction settlement in his favour, Respondents Nos. 1 and 2 are directed to proceed with regard to collection of levy or tax in the light of the discussion, made above, in accordance with law.

6. The application is, accordingly, allowed, in the circumstances, however, there will be no order as to costs.

