
(1965) 10 BOM CK 0019
In the Bombay High Court
Case No : Spl. C. Application No. 792 of 1964

Gram Panchayat, Soit	Vs	APPELLANT
Zilla Parishad, Chanda and others		RESPONDENT

Date of Decision : 13-10-1965

Acts Referred:

Constitution of India, 1950 — Article 227, 265

Citation : (1966) MhLj 539

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

Bench : Division Bench

Advocate : P.N. Karekar, for the Appellant; R.G. Siras for Respondent No. 1, D.N. Belekar for Respondents Nos. 3 to 15, 17, 18, 20 to 34 and Respondents Nos. 2 and 19 were not represented, for the Respondent

Final Decision : Allowed

Judgement

N.L. Abhyankar, J.—The petitioner in this case is the Gram Panchayat of village Soit. By this petition under Article 227 of the Constitution they challenge an appellate order of the Standing Committee of the Zilla Parishad, Chanda, modifying the assessment of house-tax made by Gram Panchayat, Soit, in respect of houses belonging to respondents Nos. 2 to 34. Its main grievance is that the Standing Committee in disposing of an appeal filed by respondents 2 to 34, neither issued a notice to the petitioner-Panchayat, nor gave it an opportunity of being heard before disturbing the assessment and levy of tax on the buildings as proposed by the Panchayat.

2. The petitioner-Panchayat has been constituted as a Village Panchayat under the Bombay Village Panchayats Act, 1958 (Bombay Act 3 of 1959). u/s 124 (1) (i) the Panchayat is empowered to levy a tax on buildings and lands within the limits of the village. Such tax has been levied by this Village Panchayat. The Panchayat passed a resolution fixing the assessment of a house-tax on houses of certain residents on 20th October 1961, which was to be operative for the next four annual periods i. e. from 1962-63 to 1965-66. Among such persons whose

houses were assessed by the Panchayat were respondents Nos. 2 to 34. Respondents Nos. 2 to 34 felt aggrieved by this assessment and preferred appeals against the same before the Panchayat Saraiti, Warora. The Panchayat Samiti dismissed the appeals filed by respondents Nos. 2 to 34 in limine on the ground that they were barred by limitation. Against the dismissal of these appeals respondents Nos. 2 to 34 preferred further appeals which lay to the Standing Committee of the Zilla Parishad, Chanda. Such an appeal is provided by section 124 (6) of the Bombay Village Panchayats Act. What followed after filing such appeals can be gathered from the return filed on behalf of the Zilla Parishad by way of a defence to this petition. The Zilla Parishad has averred in paragraph 6 of the return that for the purposes of deciding the appeals the Standing Committee directed the Administrative Officer of the Zilla Parishad, Chanda, to make a local enquiry and report the values of respective houses of respondents Nos. 2 to 34. Accordingly the Administrative Officer gave his report in all the cases on or about 3rd May 1964. The Standing Committee "adopted" this report and decided all these appeals on 27-0-1964 as per resolution filed with the petition. It is admitted by the Standing Committee that no notices of these appeals or that of the meeting dated 27-6-1964 was given to the petitioner. It is also stated that likewise notices of the meeting were not given to the appellants before it i. e. respondents Nos. 2 to 34. The defence of the Standing Committee is that there is no rule which prescribes that the petitioner-Panchayat should be given notice of the appeals or that the petitioner should be heard by the appellate authority. As there is nothing in the Act or the rules that there should be a hearing of the arguments in the appeals, the Standing Committee could dispose of the appeals without such notice or hearing.

3. Thus, there is no dispute as to the fact that neither a notice nor an opportunity for hearing was given by the appellate authority which disposed of the appeals filed by the assesses against the assessments made by the Panchayat. What is further revealed is that even respondents Nos. 2 to 34 were neither noticed nor heard before disposal of the appeals.

4. Ordinarily, a tribunal invested with the powers of hearing and disposal of an appeal as provided in section 124 (5) of the Panchayats Act acts judicially and exercises the powers of a quasi-judicial tribunal. It is an admitted position that beyond prescribing a period of limitation within which appeal is to be filed, no rules seem to have been framed either by the Standing Committee or by any other authority laying down the procedure for hearing such appeals. It is therefore contended in support of the action taken by respondent No. 1 as to the manner in which the appeals have been disposed of, that in the absence of such rules and in view of the rules of procedure to be followed by the Standing Committee in conduct of its business under the Zilla Parishads Act, there was nothing irregular or improper if the appeals were disposed of without notice or hearing either to the Panchayat or respondents Nos. 2 to 34.

5. Originally u/s 124 (5) only one appeal was provided to a person aggrieved by

the assessment, levy or imposition of any tax by a Village Panchayat, to the Panchayat Mandal. This was the original provision in the Bombay Panchayats Act, 1958. Thereafter the whole structure of District administration for local Government was altered by a new pattern in the form of establishments of Panchayat Samitis and a Zilla Parishad for each district. It was brought about by the Legislature putting on the statute book Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (Maharashtra Act 9 of 1962). u/s 78 of this Act, the Zilla Parishad constitutes itself into several committees including the Standing Committee. The constitution of the Standing Committee is given in section 79 and the powers and functions of the Standing Committee are given u/s 109 of the Zilla Parishads Act. Certain powers and duties are obligatory while others are optional and enabling powers in order to effectively discharge the functions and duties under the Act. Among such powers, the Standing Committee is empowered to call for any information, return, statement, account or report from its Chairman or from any officer or servant holding office under the Zilla Parishad. Under sub-section (2) of section 109 the Standing Committee may require any officer holding office under the Zilla Parishad to attend any meeting of the Committee and tender advice in respect of any matter which concerns the department under which such officer or servant is working and every officer or servant is bound to comply with such requisitions.

6. By the Tenth Schedule of this Zilla Parishads Act certain amendments were effected in the Acts already on the statute book, and among these Acts amendment has been effected in the Bombay Village Panchayats Act. By item 20 of this Schedule, section 134 of the Bombay Village Panchayats Act has been deleted. Thus, the provision for a Panchayat Mandal under the original scheme of the Bombay Village Panchayats Act is taken off the statute and is no longer part of the Bombay Village Panchayats Act. Similarly, the Panchayat Mandal having ceased to exist corresponding amendment has been effected in sub-section (3) of section 124. As a result of this amendment first appeal is provided to the Panchayat Samiti u/s 124(5) and a further appeal to the Standing Committee as already observed. There is no dispute that no rules have been framed so far either by the Standing Committee for its guidance or by the rule-making authority prescribing the procedure for hearing and disposal of the appeals provided for u/s 124(5) of the Bombay Village Panchayats Act.

7. The question that falls for consideration in this case is whether in the absence of rules and procedure expressly requiring notice to be given to the appellant or the opponent, the appellate authority as constituted u/s 124 (5) of the Bombay Village Panchayats Act was bound to hear either of the parties to the appeal or could dispose of the appeal by calling a report through the Administrative Officer and without hearing or giving notice to either of the parties concerned. The learned counsel appearing for the Standing Committee has gone so far as to suggest that exercise of the power of the appellate authority u/s 124 is a matter of subjective satisfaction. There is no law as such when an appeal is provided, and therefore, there is no question of hearing either of the parties, to the appeal

before the appeal is disposed of. This argument is based on the theory that the Village Panchayat is merely a limb of the lowest category in the hierarchy of district administration for the local Government, and it viewed in that light, it is not necessary, nor is it so provided, that the Panchayat which initially makes assessment of house-tax in exercise of its powers, has any right to be heard when that assessment is challenged by an assessee before the appellate authority.

8. In support of thin argument our attention was invited by the learned counsel to two decisions of the Supreme Court: (i) *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, : 1967 3 C R 98 and (ii) *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, . The aid which the learned counsel seeks to draw from these decisions is the principle that when rules make no provision regarding procedure for disposal of appeals, the law does not require that the appellate authority must issue notice or hear either of the parties. In particular, the following observations at page 1261 in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , are brought to our notice:-

As already indicated, the rules make no provisions for the reception of evidence oral or documentary, or the hearing of oral arguments, or even for the issue of notice of the hearing to the parties concerned. The entire proceedings are marked by a complete lack of formality. The several authorities have been left to their own resources to make the best selection. In this connection, reference may be made to the observations of this Court in the case of *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, . In that case, this Court has laid down that the rules of natural justice vary -with the varying constitutions of statutory bodies and the rules prescribed by the Act under which they function; and the question whether or not any rules of natural justice had been contravened, should be decided not under any preconceived notions, but in the light of the statutory rules and provisions.

9. In the other decision on which reliance is placed, namely, *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, , the issue was a narrow one. In that case the appellate authority under the Motor Vehicles Act, while disposing of an appeal arising out of an application for road transport permit, had made use of a police report in disposing of the appeal. That police report contained some averments regarding the suitability of one of the parties to be recipient of the permit. The complaint of the opposite party was that a copy of this report was not made available and adequate opportunity was not given to that party to make its submissions on the report before the appeal was decided by the appellate authority. What was actually done by the appellate authority was to read out the report to the parties and they were asked what they had to say in respect of the report. This was considered as inadequate opportunity in the High Court, and on that ground the order of the appellate authority was quashed, as violating the principles of natural justice. It is in this background

that the observations of their Lordships of the Supreme Court must be understood and appreciated. At page 241 of the report in *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, their Lordships observed as follows:-

As already indicated, the statutory provisions do not contemplate that either the Regional Transport Authority or the Appellate Authority had to record evidence or to proceed as if they were functioning as a Court of law. They had to decide between a number of applicants as to which of them was suitable for the grant of the fresh permit applied for. They took into consideration all the relevant matters and came to their decision which has not been attacked as partial or perverse. The only ground which survived before the Appellate Bench of the High Court was that the requirements of natural justice had not been satisfied. The only question that we have to determine is whether the Appellate Authority was justified in using the second report made by the police, though it had not been placed into the hands of the parties. That report did not directly contain any allegations against the first respondent. Hence there was nothing in that report which it could be called upon to meet. The only effect of that report was that many of the objections raised against the suitability of the appellant had been withdrawn by the police on further consideration of their records. The police report is (sic) for the information of the authorities concerned with the granting of permits than for the use of the several applicants for such permits. In our opinion, therefore, the fact that the Appellate Authority had read out the contents of the police report was enough compliance with the rules of natural justice.

10. Moreover, it would be seen that the claim in each of the cases was not founded on any legal right. Whether it is an application for grant of a licence to run a liquor shop as in the case of *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , or the claim in respect of a permit to operate as a transport operator, nobody can claim it as a legal right. It is a grant or patronage by the licensing authority. Therefore there is a large area for exercise of administrative discretion in determining whether the applicant is or is not suitable for the grant of such a permit. We fail to see how a tribunal required to adjudicate or adjudge the suitability of the applicant for this kind of permit can be equated to or can be considered on par with the tribunal which is called upon to decide whether or not a citizen has been validly taxed. Whenever a citizen is taxed or is likely to be taxed, a financial burden is put upon him and he has constitutional right to complain that he shall not be called upon to pay any tax except by authority of law. That right is enshrined in Article 265 of the Constitution. Therefore, the very process of levying, assessment or imposition of a tax liability involves a judicial approach and not a mere administrative approach. This is much more so when an appeal is provided. That appeal comes to be filed at the instance of a citizen who has a grievance against the proposed assessment of tax. We have no doubt, therefore, that the function which the appellate authority is called upon to discharge u/s 124 (5) of

the Panchayats Act is a judicial function. They act as quasi-judicial tribunals and though they have not all the trappings of the Court of law, they must act judicially. It is too late in the day to contend now that such bodies can hear appeals against assessment of tax or are bodies discharging administrative functions and are free to decide such matters according to their subjective satisfaction. Once this position is clear, the mere fact that the Standing Committee is empowered to call for a report or have assistance of the Administrative Officer by asking him to go to the spot and make enquiries, would make no difference in the character or nature of jurisdiction which it exercises as an appellate authority. The appellate authority is discharging judicial functions. It is not possible to accept the contention of the learned counsel for the respondent that there is no lis before the appellate authority. There are two parties, one contending for and the other opposing a particular assessment or valuation of the property. Though the Panchayat itself is the assessor, it is vitally interested in maintaining the assessment of its finances or fiscal position is likely to be affected by any diminution either in the amount of assessment or the actual ratable value. We therefore fail to see how it could be seriously urged that in the final result that emerges from appellate decision the Panchayat is not interested or not affected. Thus, there are two parties before the appellate tribunal, and it is elementary that rules of natural justice require that both parties must be heard before the appeal comes to be disposed of. It is a matter of common experience that when the appellate authority confirms, varies or reverses or modifies the assessment, the result must affect the interest of both the parties one way or the other. If that is the result to follow, it is only proper and necessary that notices must be issued to both parties, both parties must be given fair and reasonable opportunity to be heard before the appeal is finally disposed of. That such authorities are required to observe the rules of natural justice in the absence of any rules of procedure is now well settled. Absence of rules is no ground to confirm or vary the claim of one party without hearing the other party. We must therefore hold that the procedure followed by respondent No. 1 was wholly unauthorised and it has not exercised its jurisdiction according to law. Accordingly, we set aside the order dated 27-6-1964 and direct that the Standing Committee shall issue notice to each of the parties to the appeal, give them fair opportunity of being heard, and then dispose of the matter before it according to law. As the order was sought to be supported on untenable grounds, we direct that the petitioner's costs shall be paid by the respondent No. 1. The petition is allowed.