

(1962) 01 PAT CK 0002

In the Patna High Court

Case No : Appeal from Original Decree No. 350 of 1958

State of Bihar and Others

APPELLANT

Vs

Kamaksha Prasad Sharma and Others

RESPONDENT

Date of Decision : 30-01-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 14, 14(1), 14(2), 14(3), 14(4)
Police Act, 1861 — Section 15, 15(1)

Citation : AIR 1962 Patna 303

Hon'ble Judges : S.N.P. Singh, J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : The Government Advocate and Ramnandan Singh, for the Appellant;
Chakradhar Jha and Brajesh Chandra Verma, for the Respondent

Final Decision : Allowed

Judgement

Kanhaiya Singh, J.—This is a defendants' First Appeal. Certain undesirable persons of the villages within the jurisdiction of police stations Bihpur, Naugachia and Gopalpur resorted to various acts of lawlessness, and the lives and properties of the law-abiding citizens became unsafe, so much so that all preventive measures taken against many desperate persons who were bent upon creating lawlessness spreading dissatisfaction against the State because ineffective and the functioning of the rule of law became impossible. Accordingly, by a notification dated 17th February, 1954, published in the Bihar Gazette dated 3rd March, 1955, u/s 15 (1) of the Police Act, 1861, (Ext. F) the Governor of Bihar declared that the conduct of the inhabitants of the said villages had rendered it expedient to increase the number of police by the appointment of an additional force consisting of one Deputy Superintendent of Police, one Inspector, one Subedar, 11 Sub-Inspectors, one Jamadar, 11 Havildars and 99 constables to be quartered in the said villages at the cost of the inhabitants thereof, subject to any orders which may be passed under Sub-section (5) of the said section, exempting any person or section of inhabitants from liability to bear any portion

of such cost; the proclamation to remain in force for a period of one year with effect from 1st March, 1954, to 28th February, 1955.

The cost of the additional police force quartered in the said village, was fixed at Rs. 50,000/- payable in two instalments and was apportioned amongst the different inhabitants. Pursuant to this proclamation, notices were issued to the various inhabitants of those villages, including the plaintiffs, on 25-12-1954, calling upon them to pay the amount assessed against them on 4-1-1955. The present suit was filed on 4-1-1955 by this plaintiffs under Order 1, Rule 8 of the Code of Civil Procedure, in a representative capacity, representing the inhabitants of the said villages, against the State of Bihar and the connected officers for a declaration that Section 15 of the Police Act was ultra vires and unenforceable, that Section 80 of the CPC and Section 42 of the Police Act were unconstitutional and violating of their fundamental rights guaranteed by the Constitution and that the imposition of the tax and its apportionment amongst different inhabitants were illegal, ultra vires, without jurisdiction and null and void. They also prayed for a permanent injunction restraining the defendants from realising the tax so imposed.

2. The defendants resisted the suit. They justified the quartering of the additional police force and the assessment of the cost of the force and its apportionment amongst different inhabitants of the said villages, on the ground that the area was in an extremely disturbed condition and the inhabitants were living in terror and were on the mercy of certain undesirable persons. They also pleaded that Section 15 of the Police Act was constitutional. They alleged further that the suit was not maintainable, as notice u/s 80 of the CPC was not served.

3. The findings of the learned Subordinate Judge are the apportionment of the cost of the additional Police force amongst the different inhabitants was arbitrary, without jurisdiction and exemption of certain persons from the payment of the tax was also without authority and illegal, and, thus, the provisions of Sub-sections (4) and (5) of Section 15 of the Police Act were not properly complied with and, therefore, the cost so determined was not legally recoverable from the plaintiffs; Sub-sections (4) and (5) of Section 15 of the said Act are unconstitutional; and notice u/s 80 of the CPC was not served, but there was waiver of the notice on the part of the State of Bihar. He accordingly decreed the suit. Now, the State of Bihar has come up in appeal.

4. The learned Government Advocate appearing on behalf of the State candidly conceded that the apportionment of the cost of the additional force amongst the plaintiffs and other inhabitants of the said villages was not legal and the finding of the learned Additional Subordinate Judge on that point was correct. He submitted that he would personally write to the State Government not to realise the cost from the plaintiffs and other inhabitants and to proceed in accordance with law, if the State still desired to realise the tax from the said inhabitants. He pressed only two points, first. That the non-service of the mandatory notice u/s 80 of the CPC was fatal to the suit, and, second, that Section 15 of the Police Act

was: perfectly constitutional.

5. As to the first point, that no notice u/s 80 of the Code was served is common ground. Hence, the suit was unsustainable in limins. It is well settled by authorities beyond controversy that Section 80 is express, explicit and mandatory and admit of no implications or exceptions see AIR 1927 176 (Privy Council) . Learned Counsel for the respondents, however, urged that since the plaintiffs were noticed to make payment within ten days, they could not wait two months before bringing their suit, because in that case, serious and irremediable damage would have accrued to them. This argument is in the teeth of the decision of their Lordships of the Judicial Committee in AIR 1927 176 (Privy Council) , above referred to. In the Bombay High Court, a view had prevailed for long that if the immediate result of the Act would be to inflict irremediable harm, Section 80 did not compel the plaintiffs to wait two months before bringing the suit. The High Courts of Calcutta, Madras and Allahabad had taken a different view. In their opinion, Section 80 was to be strictly complied with and was applicable to all forms of action and all kinds of relief. Their Lordships of the Judicial Committee overruled the view taken by the Bombay High Court and approved of the decisions of the other High Courts. Alluding to the Bombay decision, their Lordships observed as follows:

"In effect, however, their decisions are not altogether reconcilable with one another, either as to the extent to which they go, or as to the reasoning on which they are based. Whether the section should be read as if it ran no suit other than a suit in which an injunction is claimed, or as if it ran no suit shall be instituted except when serious or irreparable damage might be occasioned to the plaintiff, if not prevented by the previous grant of an injunction, does not appear to have been settled. In the one case all suits falling within the section could safely anticipate the prescribed delay by the simple device of adding a claim for an injunction at the end of the plaint. In the other it would depend on the view, which a Judge might take of the elastic and indefinite expression "serious or irreparable damage", whether the official should have or should lose the benefit of the statutory interval of two months; nor can this difficulty in the least depend on the intention, which may be speculatively attributed to the legislature in prescribing any interval at all." After pointing out the aforesaid exceptions that will have to be imported in the plain language of Section 80 by adoption of the Bombay view, their Lordships observed that the consideration of serious and irremediable damage would not be any guide to the meaning of the Civil Procedure Code, where the clause applies to all officers of Government and to all their official acts. They have further observed;

"To argue, as the appellants did, that the plaintiffs had a right urgently calling for a remedy, while Section 80 is mere procedure, is fallacious, for Section 80 imposes a statutory and unqualified obligation upon the Court. So, too, the contention that the "act purporting to be done by the Collector in his Official capacity, in respect of which" the suit was begun, was his threatened

enforcement of payment is also fallacious, since the illegality, if any, is in the order for recovery of the tax. If that was valid, there was nothing to be restrained. Hence, though the act to be restrained is something apprehended in the future, the act alone "in respect of which" the suit lies, if at all, is the order already completed and issued".

It is manifest, therefore, that the aforesaid decision of the Privy Council affords an effective answer to all the arguments advanced by the learned counsel for the respondents. Not a single decision has been placed before us where the non-service of notice u/s 80 was ignored because of the apprehended imminent danger to the property.

6. Learned counsel, however, contended that in the instant case the Government must be deemed to have waived the notice. It is equally well-settled that although the service of notice u/s 80 is mandatory, it is competent for the authority, for whose benefit the right to notice is provided, to waive that right. Their Lordships of the Privy Council have laid down in *Vellayan Chettiar v. Govt. of the Province of Madras* AIR 1947 PC 197 that notice required to be given u/s 80 is for the protection of the authority concerned, and if in a particular case he does not require that protection and says so, he can lawfully waive his right to the notice. The question that falls for determination is whether in the instant case the State of Bihar can be taken to have waived that notice. In this case; notices of payment were served on 25-12-1954, and the plaintiffs were asked to pay the amount assessed against them on 4-1-1933. The contention of learned counsel is that the plaintiffs were given hardly twelve days" time to make payment, and that if the Government, knowing that a notice u/s 80 required a period of two months, proceeded to realise the amount in less than a fortnight"s time, the Government must be held to have waived their light to notice under that section.

It is almost the same contention as the first one in a different form. If the causation of serious and irreparable damage cannot be regarded as a ground for dispensing with the service of notice u/s 80, as held by their Lordships of the Privy Council in the case of *Bhagchand* abovementioned, the same fact cannot be regarded as constituting waiver on the part of the Government. Except that the interval between the service of notice and the appointed date for payment was less than two months, there is nothing to show that the Government waived the notice, either expressly or by implication. Not a single authority has been cited before us to show that where the commission of some official act was prejudicial to the plaintiffs and the immediate effect was to inflict irremediable harm, and the time left at the plaintiffs" disposal was less than two months; the Government must be deemed to have waived the notice u/s 80, because by reason of the apprehended act the plaintiffs could not have waited for two months without bringing on themselves some irreparable harm. Learned Counsel referred to a Bench decision of this Court in *Province of Bihar Vs. Kamakshya Narain Singh*, . But, in that case, only the contentions of learned counsel to that

effect were mentioned and no decision was given about the validity. If shortness of the interval and the resultant irreparable harm were to constitute waiver, they can very well be regarded as a valid ground for dispensing with the service of notice u/s 80.

Apart from this, the evidence does not prove risk of serious or irreparable damage to any of the plaintiffs. The sums payable were in many cases very small, not exceeding in any case Rs. 200/-, and these small sums cannot be regarded as very oppressive. Any Sums paid pursuant to the notice by the District Magistrate would obviously be returnable if that demand was proved to have been bad. No one of the plaintiffs has been shown to have been unable to make the payment within the prescribed time. Even in the Bombay High Court where the opposite view had been taken, it has been laid down that, if nothing is to be apprehended beyond what payment of damages would compensate, the section applies. There was, therefore, no reason for not complying with the provisions of Section 80. Learned counsel referred to the instances where the officers had adopted coercive methods for realisation of the amount. The high handedness on the part of a particular officer in the matter of enforcement of the Collector's demands cannot be regarded as a circumstance for determining whether irremediable harm was likely to result from the operation of the order. Therefore, the short interval between the service of notice and the date of payment by itself is not sufficient to constitute waiver of the notice on the part of the Government.

7. I have assumed so far that the period of two months is to be computed from the date of service of the notice of demand and that the plaintiffs had not sufficient time to bring suit after serving notice u/s 80, There Is however, no factual basis for this contention. The proclamation of the Government under Sub-section (1) of Section 15 of the Police Act dated 17-2-1954, exhibit F, was published in the Bihar Gazette on 3-3-1954. By this proclamation it was declared that the additional Police would be quartered in the villages within the jurisdiction of three police stations, Bihpur, Naugachia and Gopalpur at the cost of the inhabitants thereof. The plaintiffs impugned the validity of this proclamation as ultra vires and also challenged that Section 15 of the Police Act was unconstitutional, It is on this ground that they seek injunction restraining the defendants from realising the cost of Stationing of the additional police force-It is manifest, therefore, that it is the publication of this proclamation which afforded cause of action to the plaintiffs, and when the period of two months is computed from 3-3-1954, they had ample time to serve u/s 80 on the Government and to institute the suit in time. There was no valid reason for the plaintiffs to wait until the costs were apportioned and demand notices were served upon them, because" it is the legality of the proclamation that is mainly in dispute in this case. The plaintiffs cannot, therefore, be permitted to circumvent the mandatory provisions of Section 80 on the imaginary ground of shortness of time. In the circumstances of the case, the plea of shortness of time is wholly untenable.

8. Taking any view of the case, there was neither good ground for non-service of notice u/s 80, nor was there any waiver of the notice on the part of the State Government. The plaintiffs must be unsuited on this ground alone,

9. The second question is whether Section 15 of the Police Act is intra vires and constitutional. In the view I have expressed above, this question has lost most of its importance. Since, however, it was argued by learned counsel for both sides, punctuated by vehemence, I would state, of course briefly, my opinion thereon. Section 15 provides as follows;

"15 (1) It shall be lawful for the State Government by proclamation to be notified in the official Gazette, and in such oilier manner as the State Government shall direct, to declare that any area subject to its authority has been, found to he in a disturbed or dangerous state, or that, from the conduct of the inhabitants of such area or of any class or Section of them, it is expedient to increase the number of police.

(2) It shall thereupon be lawful for the Inspector-General of Police, or other officer authorised by the State Government in this behalf with, the sanction of the State Government, to employ any police force in addition to the ordinary fixed complement to be quartered in the area specified in such proclamation as aforesaid.

(3) Subject to the provisions of Sub-section (5) of this section, the cost of such additional police force shall be borne by the inhabitants of such area described in the proclamation.

(4) The Magistrate of the district, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such inhabitants".

(5) It shall be lawful for the State Government, by order, to exempt any persons or class or section of such inhabitants from liability to bear any portion of such cost.

(6) Every proclamation issued under Sub-section (1) of this section shall slate the period for which it is to remain in force, but it may be withdrawn, at any time or continued from time to time for a further period or periods as the State Government may in each case think fit to direct.

Explanation:- For the purposes of this section, "inhabitants" shall include persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area, and landlords who themselves or by their agents or servants collect rents direct from raiyats or occupiers in such area notwithstanding that they do not actually reside therein."

The first sub-section empowers the State Government to increase the number of

police and quarter additional police, forte in any area found to be in a disturbed or dangerous state No exception can be taken to this provision. In fact, this is a salutary provision calculated to secure peace and tranquillity in any area, subject to the authority of the State Government. The primary function of the State is to maintain law and order and protect the life and property of the people; and this provision is designed to effectuate that primary object of any civilised Government. The second sub-section empowers the Inspector-General of Police or other officers authorised by the State Government to employ additional police force pursuant to that proclamation. This is also an innocuous provision. The third sub-section provides that the cost of such additional Police force shall be borne by the inhabitants of the area described in the proclamation. When by their conduct the inhabitants of any area or locality or some of them have brought about a situation necessitating quartering of additional police force, it is meet and proper that the cost for the employment of additional police must be met by them.

As pointed out by their Lordships of the Privy Council in another connection in the case of *Bhagchand*, above referred to, it is the essence of measures of this kind, which in one form or another are not uncommon, that one class has to pay for the misdeeds of another. The propriety of applying the provisions of the Police Act in the present case has not been impugned. It will be noticed that Sub-section (3) does not impose any tax or penalty upon the inhabitants of the disturbed area. It only makes them liable for payment of the cost of stationing of the additional police force. The amount of cost that may be realised is not imaginary or speculative, nor is there in it any element of arbitrariness. It is a fixed amount which can be ascertained and determined any moment. The State Government does not propose to realise from the inhabitants anything more than the actual cost for the employment of the additional police. Therefore, Sub-section (3) cannot be challenged either on the ground of arbitrariness or on the ground of imposition of penalty. In my opinion, this sub-section also is perfectly valid and constitutional. The fourth Sub-section provides for apportionment of such cost among the inhabitants of the disturbed locality. It was urged by learned Counsel that this sub-section was unconstitutional, as there was fetter on the discretion of the District Magistrate. This contention also is not borne out by the plain language of Sub-section (4). The Magistrate is not to apportion the cost according to his whims and caprices. This sub-section lays down the basis of the apportionment, and the basis is the means of the respective inhabitants. The Magistrate has, therefore, to determine the means of the people and make the apportionment, and there is room for play of his whims and caprices. Further, the means has to be determined by the District Magistrate after such enquiry as he may deem necessary. This also, in effect lays down that the Magistrate has to take evidence and then determine the means of each party. If the Magistrate has not acted according to the evidence but has proceeded on imaginary grounds in apportioning the cost, his order may be struck down. The fact that the Magistrate may commit error in determining the means and apportioning the cost is no

ground to challenge the legality of this sub-section. In my opinion, there is a reasonable basis for the apportionment and there is a provision for enquiry regarding apportionment. Therefore, this provision is equally good in law.

Then we come to the fifth sub-section which was subjected to greater criticism. It empowers the State Government to exempt by order any persons or section of such inhabitants from liability to bear any portion of such cost. The contention of learned counsel is that this sub-section confers upon the State Government unfettered power to grant exemption, and, therefore, this sub-section affords room for discrimination and unequal treatment of the people of the locality in question. Prima facie, the State Government possesses uncanalised powers to grant exemption. Apparently, Sub-section (5) does not contain any rule or principle for exempting any inhabitant from liability to pay the cost. The argument is plausible indeed, but a deeper consideration exposes its hollowness. This sub-section cannot be considered in isolation; it has to be read and construed along with the other provisions of Section 15. It must take colour from and be conditioned by the main objects contained in Sub-section (1) of Section 15. The foundation for the quartering of additional police force is the disturbed or dangerous state of the area in question or the conduct of the inhabitants of such area. Accordingly, the persons, who are primarily responsible for disturbing the peace and tranquillity of the area or whose conduct is such as to be a menace to the society, must bear the burden of the cost. The law-abiding citizens, who have kept themselves aloof, may be legitimately exempted from the payment of the cost.

If the entire provision of Section 15 is considered together, it cannot be said that Sub-section (5) does not lay down any principle or policy for the guidance of the exercise of discretion by the Government in respect of exemption. It is not the requirement of law that the policy or the principle must be laid down in the relevant provision itself. It is permissible in law to deduce the policy or the principle from the connected provision. I may in this connection usefully reproduce here the observations of their Lordships of the Supreme Court in *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, :

"That the policy and purpose of a given measure may be deduced from the long title and the preamble thereof has been recognised in many decisions of this Court The general policy of the Bill as laid down in its title and elaborated in the preamble is to provide for the better organisation and development of educational institutions providing a varied and comprehensive educational service throughout the State". Each and every one of the clauses in the Bill has to be interpreted and read in the light of this policy. When, therefore, any particular clause leaves any discretion to the Government to take any action it must be understood that such discretion is to be exercised for the purpose of advancing and in aid of implementing and not impeding this policy. It is, therefore, but correct to say that no policy or principle has at all been laid down

by the Bill to guide the exercise of the discretion left to the Government by the clauses in this Bill."

When the policy or the principle in the exercise of any discretion can be deduced from the title and the preamble of an enactment, there is no reason why the policy and the principle of exemption under Sub-section (5) cannot be deduced from the purpose and object of stationing the police force, as indicated in Sub-section (1) of Section 15. It will not, therefore, be correct to say that the State Government has been vested with absolute unfettered authority to grant I exemption and that Sub-section (5) is discriminatory and violative of Article 14 of the Constitution.

In my opinion, there is very good basis, for exemption. The constitutionality of the remaining provision of Section 15 is not in dispute. I am fortified in this view by the decisions of the Allahabad High Court in Durga Prasad Vs. The State and Others, and the Rajasthan High Court in Pratap Singh v. State of Rajasthan (S) AIR 1955 Raj 5. Learned Counsel for the respondents strongly relied upon a decision of this Court in Ajab Lal Mandal and Others Vs. State of Bihar and Another, . That case is clearly distinguishable, There the Court was considering the provisions of Section 8 of the Bihar Maintenance of Public Order Act, which is essentially different from the Police Act. That section provides for imposition of collective fine. The Police Act provides for the imposition of cost of the additional police force. There is a difference between the cost for enjoyment of additional police force i. e., cost for rendering service and the collective fine, and the decision in that case cannot be a safe guide for determining the validity of Section 15 of the Police Act. In my opinion, that case has no application here. It must be held, therefore, that Section 15 of the Police Act is perfectly constitutional and does not offend Article 14 of the Constitution.

10. In the result, this appeal is allowed the judgment and decree of the Court below are set aside and the suit is dismissed. In the circumstances, the parties will bear their own costs throughout.

S.N.P. Singh, J.

11. I agree.