

(1962) 12 MP CK 0005
In the Madhya Pradesh High Court
Case No : M.P. No. 293 of 1962

Sunderlal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 11-12-1962

Acts Referred:

Central Provinces and Berar General Clauses Act, 1914 — Section 20
Central Provinces and Berar Local Government Act, 1948 — Section 16(1)

Citation : (1963) J LJ 271

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen and N.N. Pandey, for the Appellant; H.L. Khaskalam, Addl. Govt. Advocate, Y.S. Dharmadhikari and P.R. Padhye, for the Respondent

Judgement

P.V. Dixit, C.J.—By this application under Article 226 of the Constitution of India, the Petitioners question the validity of a notification issued by the State Government on 5th April 1962 (published in the Gazette dated 27th April 1962) withdrawing an earlier notification issued on 16th November 1949 declaring the market at village Tendumundi a public market u/s 116(1) of the Central Provinces and Berar Local Government Act, 1948 (hereinafter referred to as the Act). The Petitioner Sunderlal is the owner of a part of the land of the market area. The other Petitioners, who are shopkeepers, had their stalls in the market. Their prayer is that a writ of certiorari be issued for quashing the notification dated the 5th April 1962.

2. u/s 49(1) (VII) of the Act, the control and administration of, and the responsibility for the establishment and management of, markets is with the Janpada Sabha. Section 116 (1) gives to the government the power to declare any place within the Janpada area as a public market. The power is exercisable on a representation made by the Sabha to that effect. On 16th November 1949, the Government issued a notification u/s 116 (I) and (2) of the Act declaring the market at village Tendumundi within the Janjgir Janpada area in Bilaspur district

to be a public market. The Government had also issued a notification on 28th September 1949 declaring the market area at Ghugri, a village adjoining Tendumundi, to be a public market u/s 116(1). This market was under the control and administration of the Janpada Sabha of Raigarh. In 1952 both Ghugri and Tendumundi village came to be included in one and the same Tehsil, namely Tehsil Sakti, and were thus placed under the local administration of the Janpada Sabha, Sakti. Both these markets continued to function till the impugned notification was issued. It appears that early in 1961 some persons owning the land on which Tendumundi market was located protested, by serving notices on the Janpada Sabha, against the use of their land as market area without payment of any compensation. Thereupon the Chief Executive Officer of the Janpada Sabha, Sakti, made a recommendation to the Collector, Bilaspur, that as there was a notified public market at Ghugri, adjacent to Tendumundi market, and as Ghugri market area was more suitable and convenient for the holding of a market than the Tendumundi market area, it was not necessary to incur any expenditure in the acquisition of land belonging to private persons on which the Tendumundi market was located and that the Tendumundi market should be disestablished. This recommendation of the Chief Executive Officer was approved by the Collector who then moved the Government for the issue of a notification disestablishing the Tendumundi market. In consequence, the Government issued the impugned notification of 5th April 1962 which is as follows-

In exercise of the powers conferred by Section 161 (a) of the Central Provinces and Berar Local Government Act, 1948, (XXXVIII of 1948), the State Government are pleased to withdraw notification No. 4453 2629-J-XIII dated the 16th November 1949 relating to public market at village Tendumundi within the Sakti Janpada area of the Bilaspur district issued by the Local Self Government (Janpada) Department of the former Government of the Central Provinces and Berar.

3. It was argued by Shri Sen, learned Counsel appearing on behalf of the Petitioners, that the Act did not expressly confer any power on the Government to cancel a notification issued u/s 116 (A) with regard to the declaration of any place within the Janpada area as a public market, and that Section 161 (a) of the Act under which the impugned notification was issued did not give any such power to the Government; nor could such power be claimed by implication on the strength of Section 20 of the Central Provinces and Berar General Clauses Act, 1914. It was further said that even if with the aid of Section 20 of the said Act the power to issue a notification u/s 116(1) declaring any place to be a market area was taken to include the power to withdraw or cancel the declaration, the notification dated the 5th April 1962 abolishing the Tendumundi public market was still invalid inasmuch as the Janpada Sabha, Sakti, had never made a representation to the Government that the market should be disestablished that a representation to that effect by the Sabha was necessary as the rule of construction laid down in Section 20 of the Act of 1914 expressly provided that the power to rescind any notification was exercisable in the like

manner and subject to the like sanction and conditions (if any) as governed the issue of the original notification.

4. In our judgment, the Petitioner's contention that the notification dated the 5th April 1952 disestablishing the Tendumundi market is invalid must be upheld. It is obvious from the text of the notification that the Government purported to issue it in the exercise of its powers u/s 161 of the Act. But that provision does not give to the Government the power to cancel a notification issued in the exercise of any of the provisions of the Act. Section 161 runs as follows-

If any difficulty arises in connection with the application of this Act to any Janpada area or part thereof or if the circumstances of any such area are such that, in the opinion of the State Government, any of the provisions of this Act are unsuited thereto, the State Government may, by notification-

(a) withdraw the operation of those provisions from the Janpada area or part thereof, or make such order for

removing the difficulty as it may judge to be necessary for that purpose;

(b) apply the provision to the Janpada area or part thereof in a modified form to be specified in such notification;

(c) make any additional provision for the Janpada area or part thereof in respect of the matter mentioned in the provisions which have been withdrawn from, or applied in a modified form, to the Janpada area or part thereof.

It will be seen that this section only empowers the Government to withdraw or modify the operation of any of the provisions of the Act or to add to it if any difficulty arises in connection with the application of the Act to any Janpada area or a part thereof or if having regard to the circumstances of the area the Government is of the opinion that any of the provisions of the Act are unsuited thereto. It does not authorize the Government to cancel or supersede a notification issued earlier in the exercise of the powers under any of the provisions of the Act. The cancellation of such a notification is not in any sense a withdrawal or modification or addition to the operation of any of the provisions of the Act. Learned Government Advocate sought to urge that u/s 161 the Government could make any order for removing any difficulty in connection with the applicability of the Act to any Janpada area and as there was financial difficulty with regard to the acquisition of land on which the Tendumundi market was established the notification in question disestablishing the market was validly made. We are unable to accede to this contention. Clause (a) of Section 161 does not enable the State Government to make an order for removing any difficulty. The order that can be made under that clause must be for the purpose of removing "the difficulty" spoken of earlier in the section, namely, any difficulty arising in connection with the application of the Act to any Janpada area or a part thereof. The difficulty indicated by the learned Government Advocate is clearly not a difficulty arising in connection with the application of the Act to the

Janpada area. On the language of the notification and the true construction of Section 161, the notification dated the 5th April 1962 cannot be regarded as falling u/s 161 and validly made thereunder.

5. Learned Government Advocate then attempted to support the validity of the notification with reference to Section 20 of the C. P. and Berar General Clauses Act. The argument was that the power to issue a notification u/s 116(1) included the power to rescind, amend or vary the original notification and that as u/s 116(1) a notification declaring any place to be a public market could be made only upon a representation made by the Sabha, a public market could be disestablished open(sic) a representation of the Sabha. Learned Government Advocate pointed out that the Administrative Committee of the Janpada Sabha, Sakti, constituted u/s 23-A, had the power to deal with matters relating to the establishment and management of markets, and the Administrative Committee had by a resolution passed on 6th August 1958 authorised the Chief Executive Officer to take any decision he thought it proper with regard to the continuance or disestablishment of the Tendumundi market and act upon it; and that, therefore, the recommendation of the Chief Executive Officer that the said market should be disestablished was a representation of the Janpada Sabha for the disestablishment of the market and thus the requirement of Section 20 of the C.P. and Berar General Clauses Act that the power to rescind a notification was exercisable in the like manner and subject to the like sanction and conditions (if any) as governed the making of the original notification, was satisfied.

6. It is no doubt true that the Act does expressly give power to rescind, amend or vary a notification made u/s 116(1) of the Act. But on the application of the rule of construction enunciated in Section 20 of the C.P. and Berar General Clauses Act, such a power can be implied. The implication of such a power can in no way nullify the effect of Section 116(1) or any other provision of the Act, It is easy to see that the location of a public market in a Janpada area must necessarily depend on the exigencies of the prevailing time and circumstances. A place declared to be a public market at a certain time and in certain circumstances may be found to be utterly unsuited for that purpose some year later. For the location of a public market at a convenient place it is essential that the Sabha and the Government must have the power to decide whether a place once declared to be a public market should continue to remain as a public market or should be disestablished and another place should be declared instead as a public market. The power to rescind, vary or amend a notification declaring a place to be a public market, if conceded to the Government, would, far from rendering ineffective any provision of the Act, only help the Janpada Sabha in discharging its responsibility for the establishment and management of markets and would thus be consistent with the purpose and the scheme of the Act. The decisions of the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, and *Gopi Chand Vs. The Delhi Administration*, , which learned Counsel for the Petitioners cited to support the proposition that the rule of construction laid down in Section 20 of the C. P. and Berar General Clauses Act could not be

invoked in the present case, do not lay down the proposition that the power to issue a notification does not include the power to amend, vary or rescind it. In those cases, what was emphasized was that Section 21 of the General Clauses Act, 1897, (similar to Section 20 of the local General Clauses- Act) embodies a rule of construction, the nature and extent of the application of which must inevitably be governed by the relevant provisions of the statute which confers the power to issue the notification. Those cases are authorities for the view that the question as to the existence of an implied power of cancellation must be determined with reference to the context and subject-matter of the statute and this implied power cannot be so used as to nullify or render ineffective the provisions of the relevant Act

7. Section 20 of the C.P. and Berar General Clauses Act, however, does not assist the Respondent-State because in the present case there was no representation at any time of the Janpada Sabha, Sakti, for the disestablishment of Tendumundi public market. Section 116 (1) says that "The State Government may, upon a representation made by a Sabha, by a notification, declare that any place within the Janpada area shall be a public market." The implied power of cancellation, variation or amendment of a notification issued u/s 116(1) must be exercised subject to the limits and conditions prescribed by Section 20 of the C.P. and Berar General Clauses Act. Section 20 provides that-

Where, by any Madhya Pradesh Act, a power to issue orders, rules, bye-laws or notifications is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any orders, rules, bye-laws or notification so issued.

According to the rule of construction embodied in this provision, the power of rescission, amendment or variation is exercisable in the like manner and subject to the like sanction and conditions (if any) as governed the making of the original notification. It follows, therefore, that a notification issued u/s 116(1) declaring any place within the Janpada area to be a public market cannot be cancelled by the State Government without a representation for that purpose from the Sabha.

8. Here there was no such representation of the Janpada Sabha, Sakti. It is true that the Administrative Committee constituted u/s 23-A can under the rules framed u/s 182(2) (x-a) perform the duties relating to the establishment and management of markets if the Sabha has entrusted those duties to the Committee. But the Administrative Committee is a body distinct from the parent body, the Janpada Sabha constituted u/s 4. For the purpose of Section 116(1), the representation must be by the Sabha and not by the Administrative Committee. That being so, the fact that here the Administrative Committee authorised the Chief Executive Officer to take a decision with regard to the continuance or disestablishment of the market of the Tendumundi market and the Chief Executive Officer recommended to the Collector the disestablishment of the market cannot in any way assist the State Government in supporting the validity of the notification dated the 5th April 1962. It is not the

case of the State that the decision of the Chief Executive Officer to discontinue Tendumudi market was approved by the Sabha and that it was after this approval of the Sabha that the Chief Executive Officer made the recommendation that he did to the Collector for the disestablishment of the market. The notification in question not having been issued upon a representation made by the Janpada Sabha is wholly illegal and invalid and must be quashed.

9. It was also urged on behalf of the Respondents that the Petitioners had no enforceable right in the matter of the establishment or disestablishment of any place as a public market, and that, therefore, they could not challenge the validity of the notification dated the 5th April 1962. As to this, it is sufficient to say that no person can claim as of right that the public market should be established at a particular place or that a place once declared to be a public market should continue to be a public market. But the Petitioners as persons residing in the Janpada area and frequenting the market and as persons exposing their goods for sale in the stalls in the public market have clearly a right to contend that a place declared u/s 116(1) to be a public market still continues to be a public market and they have a right to frequent the market and do business therein and the disestablishment of that market not being in conformity with the statutory provisions is invalid.

10. For these reasons, the notification No. 1508/302/XVIII/ dated the 5th April 1962 (published in the Gazette of 27th April 1962) withdrawing the earlier notification No. 4455-2629-J-XIII dated the 16th November 1949 with regard to the declaration of village Tendumnndi as a public market is quashed. In the circumstances of the case, we make no order as to costs. The outstanding amount of security deposit shall be refunded to the Petitioners.