The Village Panachayat by Its Executive Officer Vs. Sri La Sri Subramania Desiga Gnanasambanda Pandarasannadhi, Trustee, Velur Devasthanam

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Court : Chennai

Decided On : Apr-21-1961

Reported in : (1962)1MLJ36

Appellant : The Village Panachayat by Its Executive Officer

Respondent : Sri La Sri Subramania Desiga Gnanasambanda Pandarasannadhi, Trustee, Velur Devasthanam

Judgement :

Ramachandra Iyer, J.

1. Vaitheeswarankoil, which owes its importance to the two famous temples of Sri Vaidyanathaswami and Sri Muthukumaraswami situate within its limits, is a village in ii}e Tanjore district, whose civic affairs are vested in a Panchayat constituted under the Madras Village Panchayats Act, 1950. Two of the annual festivals in the temple, the 'Panguni Utharam' and 'Mandalabhisheka Krithigai', which last for fourteen and three days respectively, attract large numbers of pilgrims. Sanitary and other arrangements for the convenience of the pilgrims have to be, and are, made by the Panchayat during the time of the festival. Claiming that, under the provisions of Section 78 of the Madras Village Panchayats Act, the temple would be bound to contribute one half of the expenses incurred in respect of the arrangements aforesaid and after giving credit to what was paid by the temple in that behalf, the Panchayat instituted two Small Cause Suits in The District Munsif's Court, Sirkali, against the temple for the recovery of the balance of contribution due in respect of the two festivals held in 1956. The suits have been dismissed by the learned District Munsif on the ground (1) that there is no legal authority in the Panchayat to require the temple to contribute to the expenses incurred by it in connection with the sanitary arrangements made for the festivals, and (2) that the amount expended, in respect of half of which the claim is made, was utilised not merely for making arrangements for the festival, but for certain permanent amenities to the civic needs of the Panchayat and that it could not be said that such amount was wholly expended in connection with making special arrangements for the purpose of festivals. The Panchayat, feeling aggrieved by the decision, has filed these Revision Petitions.

2. Prior to the Madras Village Panchayats Act of 1950, the constitution and powers of the Vaitheeswarankoil Panchayat were governed by the provisions of the Madras Local Boards Act, 1920. Section 128 of the Act enabled a Panchayat, within whose jurisdiction a temple is situate, attracting a large concourse of pilgrims either throughout the year or on particular occasions, to call upon the temple authorities to contribute to the funds of the Panchayat for the expenses incurred for making the special arrangements for public health, safety and convenience of the pilgrims. Such

a contribution might take the shape either of permanent contribution or of a recurring one. Section 128 authorised the Government to determine the amount of contribution to be made by the temple. Purporting to act under the provisions of Section 128 of the Madras Local Boards Act, the Government passed G.O. No. 3447 (P.H.), dated 26th September, 1939, sanctioning the levy by the Vaitheeswarankoil Panchayat from the respondent-Devasthanam of a contribution of one half of the expenditure incurred on special sanitary arrangements provided by the Panchayat Board during festivals of the Devasthanam. Under the Public Health Act, the Government have notified that the two festivals, namely, Panguni Utharam and Mandalabhisheka Krithigai, conducted by the respondent-Devasthanam, attract a large concourse of pilgrims.

3. The Village Panchayats Act of 1950 came into force on 1st August, 1950. Section 136 of that Act enacted certain consequential amendments to the Madras Local Boards Act. Those amendments were set forth in Schedule 4 to the Act. Item 67 of Schedule 4 directs the omission of the word 'panchayat' from Section 128 of the Local Boards Act. That would mean that the provisions of Section 128 will not thereafter apply to the case of a panchayat. The Village Panchayats Act, however, enacted a separate provision in Section 78 thereof for receiving contributions from temples, etc., for sanitary arrangements made in connection with the festivals therein. Section 78 states:

Where a mosque, temple, mutt or any place of religious worship or instruction or any place which is used for holding fairs, or festivals or for other like purposes is situated within the limits of a village or in the neighbourhood thereof and attracts either throughout the year or on particular occasions a large number of persons, any special arrangements necessary for public health, safety or convenience, whether permanent or temporary, shall be made by the panchayats; but the Government may, after consulting the trustee or other person having control over such place, require him to make such recurring or non-recurring contribution to the funds of the panchayat as they may determine.

It will be seen from a comparative study of Section 128 of the Madras Local Boards Act and Section 78 of the Village Panchayats Act that the authority to decide about calling upon a temple to contribute are different. In the former case, it was the Panchayat that will have to take the decision to call upon the temple to contribute, it being left to the Government to fix the quantum or proportion of the contribution to be made. Under Section 78 of the Panchayats Act, the Government, after consulting the trustee or other person having control over such place, has itself to decide whether the recurring or non-recurring contribution to the funds of the Panchayat should be made. They should also decide the quantum to be paid by the institution. It cannot therefore be said that Section 128 of the Local Boards Act was repealed and re-enacted by the Panchayats Act in the same form in which it existed before. Section 18 of the Madras General Clauses Act provides for keeping alive notifications made under a repealed Act and the provisions of which were re-enacted: the notifications, published under the repealed provisions shall be deemed, so far as the same are consistent with the re-enacted provisions, to have been duly issued under such re-enacted provisions. Section 18 will have no application to the present case, as the notification will in a sense be inconsistent with the new provisions. The previous notification, namely, that contained in G.O. No. 3447, was made on the footing that the Village Panchayats Act had decided on the expediency of the levy. Under Section 78 of the Village Panchayats Act, it is for the Government to decide upon the levy. It

would follow that G.O. No. 3447 will have no force after the repeal of Section 128 of the Madras Local Boards Act, so far as its application to the Village Panchayats is concerned. It is conceded that the Government have not passed any order under Section 78 of the Village Panchayats Act to require the respondent-temple to make recurring or non-recurring contribution to the funds of the Vaitheeswarankoil Panchayat.

4. Mr. G. Ramanujam, who appears for the petitioner, contends that the levy of contribution made by the Panchayat previous to the coming into force of the Panchayats Act should be held to be continued by virtue of Schedule 3, Clause 12 of the Act. Under Section 131 of the Village Panchayats Act, it is enacted that the provisions of the Act have to be read subject to Schedule 3 in regard to the first re-constitution of the panchayats in existence at the commencement of the Act. Schedule 3, Clause 12, states:

Any tax, cess or fee which was being lawfully levied by any panchayat at the commencement of this Act shall continue to be levied by the Panchayat for the year in which this Act is brought into force and unless and until the Government by general or special order otherwise direct, for subsequent years also.

Mr. Ramanujam's contention is that the contribution claimed in the case should be regarded as a fee, and that, being admittedly leviable under the provisions of Section 128 of the Madras Local Boards Act, it should be deemed to have continued even after the coming into force of the Village Panchayats Act. The question then for determination, therefore, is whether the contribution claimed under the provisions of Section 78 of the Village Panchayats Act can be called a fee. In the Sirur Mutt case : [1954]1SCR1005 , the Supreme Court defined what 'a fee' is, as contradistinguished from a ' tax'. In a more recent case Hingir-Rampur Coal Co. v. State of Orissa : [1961]2SCR537 , Gajendragadkar, J., observed:

It is true that, between a tax and a fee, there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not be, supported by any consideration of service rendered in return, a fee is levied, essentially for services rendered, and, as such, there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a. specific area or to a specific class of persons or trade or business in any local area, and, as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee.

So far as the present case is concerned there are two elements in the concept of a 'fee' which have to be satisfied, before it can be held that Rule 12 stated above would continue the levy valid notwithstanding the inapplicability of Section 128 of the Madras Local Boards Act to a Panchayat. One is that the fee should be for services rendered, and the second is that such services should be rendered to the person from whom the fee is levied. The quantum of service to a particular individual is not the deciding factor in the determination of the amount of fee. But the fact still remains that the levy should be correlated to the service rendered. In the present case, there can be no doubt that the services were rendered by the Panchayat in keeping the village in good and sanitary condition for the convenience of the pilgrims who attended the festivals. Can the services so rendered be deemed to be services done to

the temple? Prima facie, the services done appear to be for the purpose of the panchayat itself. The temple gets no benefit from the services, though the pilgrims might get the benefit and the residents of the locality might also get the benefit. Mr. Ramanujam contends that the pilgrims should be deemed to have attended the festival at the invitation of the temple authorities, and that, therefore, any service done to the former should be deemed to be really service done to the person or institution inviting them. I am, however, unable to agree that, when a pilgrim goes to a public temple, he does so at the invitation of the temple authorities. Attending public temples or festivals I herein is a form of worship to which a person is entitled to. No invitation is necessary, and indeed, the temple authorities will have no right to prevent a member of the public or a pilgrim from attending the festival. When the pilgrims attended. a festival, they do so, not as the invities of the temple, but in exercise of their own right of worship in public temples and in the festivals connected with the temple.... The services rendered for public health, safety and convenience of those persons can be deemed to be services only for those persons, and, incidentally, also for the residents of the locality whose civic needs the Panchayat is always bound to attend to under the law. It cannot therefore be said that the levy of contribution for expenses under Section 78 is a fee. The right to demand contribution for expenses arises by virtue of the statute, which makes the third party, namely, the temple pay for the consequences of its conducting festivals which attract large crowds. Being a statutory provision, the liability thereunder cannot arise unless the conditions of the statute are fulfilled. The conditions under Section 78 contemplate an order by the Government, which, as already stated, has not yet been passed. Not being a fee, the provisions of Schedule 3, Clause 12, of the Village Panchayats Act, will not apply to the case, it cannot be said that, as the contribution was levied prior to the year 1950, it could continue to be levied thereafter by virtue of Section 131 of the Local Boards Act. This conclusion renders it unnecessary to consider the correctness or otherwise of the second point decided by the learned District Munsif, namely, that the demand was partly made up of items of expenditure incurred in connection with the special arrangements for the festival and partly for effecting permanent benefits to the Panchayat itself.

5. These petitions fail and are dismissed with costs in C.R.P. No. 577 of 1960