

KHARGRAM PANCHAYAT SAMITY & ANR.

v.

STATE OF WEST BENGAL & ORS.

APRIL 23, 1987

[A.P. SEN AND V. BALAKRISHANA ERADI, JJ.]

*West Bengal Panchayat Act, 1973/West Bengal Panchayat (Samiti Administration) Rules, 1984—s. 117/Rules 7, 8 and 9—Power to grant licence for holding a hat/fair includes power to specify a day on which such hat/fair shall be held.*

*Administrative Law.*

*Local authorities—Conferral of statutory power—Impliedly authorises everything which could fairly and reasonably be regarded as consequential and incidental to that power.*

Ever since 1933, a cattle fair called Nagar Cattle Hat is being held on Saturday every week by the Nagar Quorania Junior High Madrasah. Since 1974, respondent No. 6, a club called Prabartak Parishad set up a parallel cattle fair at Sherpur, about two kilometres away from the site of Nagar Cattle Hat on every Saturday, known as Sherpur Cattle Hat. The holding of two rival cattle fairs on the same day gave rise to feeling of rivalry couple with tension and this frequently led to violent conflicts and skirmishes between the two rival groups.

Upon a representation made to him, the District Magistrate, Murshidabad caused an inquiry to be held, and held that holding of the two cattle fairs on the same day created serious law and order problem and accordingly directed holding of the hats on two different days for preservation of public peace and tranquility.

On a writ petition filed by the respondent No. 6 the High Court struck down the order of the District Magistrate on the ground that no such direction could be issued by him as the competent authority was the Khargram Panchayat Samiti.

In compliance with the directions made by the Court, the Panchayat Samiti passed a resolution that the Nagar Cattle Hat run by Nagar Quorania Junior High Madrasah would be held on Saturday and the Sherpur Cattle Hat run by Prabartak Parishad would be held on Friday.

**A** Respondent No. 6 filed another writ petition challenging the said resolution. A Single Judge quashed the resolution of the Panchayat Samiti on the ground that it acted in breach of the rules of natural justice while reserving liberty to the Panchayat Samiti to come to a decision afresh after affording an opportunity to respondent No. 6.

**B** The appeal preferred by the Panchayat Samiti was admitted, but the Division Bench declined to grant stay and directed that the Panchayat Samiti should comply with the order of the Single Judge. Consequently, the Panchayat Samiti issued notices to the contending parties requiring them to submit their claims for consideration. The Panchayat Samiti after considering the claims of both parties and the material record, passed a resolution that the Nagar Cattle Hat would be held on Saturday every week and the Sherpur Cattle Hat would be held on Friday, and directed the Executive Officer to incorporate such a condition in the licence granted to the two organisations for holding the cattle fairs on these days.

**C**

**D** Again, respondent No. 6 filed a writ petition challenging the resolution dated April 12, 1985. A Single Judge dismissed the writ petition. Respondent No. 6 then moved the Division Bench for restraining the Panchayat Samiti from giving effect to the said resolution. The Division Bench quashed the resolution dated April 12, 1985 holding that although in terms of s. 117 of the Act, the Panchayat Samiti was vested with the power of granting a licence for the holding of a hat or fair, by the framing of rr. 7, 8 and 9 of the West Bengal Panchayat (Samiti Administration) Rules, 1984 the power of the Panchayat Samiti is confined to making provision for maintenance of sanitation, health and in the market area which is the essence of the power under s. 117, and further that in the absence of a provision in the rules in that behalf it had no power to specify a day on which such hat or fair should be held.

**F** Allowing the Appeal,

**G** HELD: 1. The view taken by the High Court that although the Panchayat Samiti was vested with the power to grant a licence for the holding of a hat or fair under s. 117 of the West Bengal Panchayat Act, 1973, yet it had no consequential or incidental power to specify a day for holding of such hat or fair, is manifestly erroneous. [1213C-D]

**H** 2. The power to grant a licence for the holding of a hat or fair under s. 117 of the Act necessarily carries with it the power to specify a day on which such hat or fair shall be held. Such power to specify a day must be held to be a power incidental or consequential upon the principal power of issuing a licence under s. 117 of the Act for holding of a hat or fair. [1214H; 1215A]

3. The rules or the absence of it do not detract from the substantive power conferred by a statute. [1215A-B] A

4. The essence and content of the power of a Panchayat Samiti under s. 117 of the Act is issuance of a licence for the holding of a hat or fair and not mere maintenance of sanitation, health and hygiene as held by the High Court. [1215B] B

5. It is well-accepted that the conferral of statutory powers on local authorities must be construed as impliedly authorising everything which could fairly and reasonably be regarded as incidental or consequential to the power itself. [1213F-G]

6. The doctrine of *ultra vires* is not to be applied narrowly. [1214B-C] C

*De Smith's Judicial Review of Administrative Action*, 4th edn., p. 95; *HWR Wade's Administrative Law*, 5th edn., p. 217; *Craies on Statute Law*, 6th edn., p. 276; *Attorney General v. Great Eastern Railway*, LR (1880) 5 AC 473; *Baroness Wenlock v. River Dee Co.*, LR (1885) 10 AC 354; *V.T. Khanzode & Ors. v. Reserve Bank of India*, [1982] 2 SCC 7 and *State of Uttar Pradesh v. Batuk Deo Pati Tripathi & Anr.*, [1976] 2 SCC 102, relied upon. D

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5675 of 1985.

From the Judgment and Order dated 2.8.1985 of the Calcutta High Court in Appeal from Original Order Tender No. 165 of 1985. E

S.N. Kaicker, Girish Chandra and Mrs. Sarala Chandra for the Appellants.

Tapas Roy, Parijat Sinha, D.N. Mukherjee, Dalip Sinha and J.K. Das for the Respondents. F

The Judgment of the Court was delivered by

SEN J. This appeal by special leave is directed against the judgment and order of the Calcutta High Court dated August 2, 1985 quashing a resolution passed by the Khargram Panchayat Samiti dated April 12, 1985 specifying that the cattle fairs run by two rival organisations i.e. Nagar Cattle Hat run by Nagar Quorania Junior High Madrassah would be held on Saturday every week and Sherpur Cattle Hat run by Prabartak Parishad on Friday. By the judgment under G H

- A appeal, a Division Bench of the High Court has held that even though the Panchayat Samiti was vested with the power to grant licence for holding of a hat or fair under s. 117 of the West Bengal Panchayat Act, 1973, still in the absence of a rule framed under the Act it had no power to specify a day on which such hat or fair shall be held. The issue involved is whether the Panchayat Samiti being vested with the authority to grant a licence for the holding of a hat or fair under s. 117 of the Act within the limits of its territorial jurisdiction, must necessarily be held to have the consequential or incidental power to specify a day for the holding of such hat or fair.

- C The facts of the case are as follows. Ever since 1933, a cattle fair called Nagar Cattle Hat is being held on Saturday every week by the Nagar Quorania Junior High Madrassah, a charitable educational institution which runs a school and is also engaged in other social activities, which attracts a large gathering of buyers and sellers of cattle dealers within the district of Murshidabad and even beyond the district. Since 1974, respondent no. 6 a club called Prabartak Parishad, set up a parallel cattle fair at a place called Sherpur, about two kilometres away (as the crow flies) from the site of Nagar Cattle Hat on every Saturday, known as Sherpur Cattle Hat. The holding of two rival cattle fairs on the same day gave rise to a feeling of rivalry coupled with tension amongst the local population as also the large number of cattle dealers and peasantry attending the cattle fairs and this frequently led to violent conflicts and skirmishes between the two rival groups. Upon a representation made to him in 1980, the District Magistrate, Kurshidabad caused an inquiry to be held and by his order dated April 2, 1980 held that holding of the two cattle fairs on the same day created serious law and order problem and accordingly directed holding of the hats on two different days for preservation of public peace and tranquility. On a writ petition filed by respondent no. 6 Prabartak Parishad, a Division Bench of the High Court by its order dated June 2, 1982 struck down the impugned order of the District Magistrate on the ground that no such direction could be issued by him as the competent authority was the Khargram Panchayat Samiti. It was observed:

- G "The only authority which is competent to give any direction in this regard is the authority under the West Bengal Panchayat Act, 1973. No such direction has been given by the authority under the said Act. In the circumstances, we set aside the impugned order of the District Magistrate and the judgment of the learned Judge. Appeal is allowed.
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There will be no order as to costs. It is made clear that this order is without prejudice to any steps that may be taken in accordance with law by the authority under the said Act." A

In compliance with the direction made by the High Court, the District Magistrate obviously actuated by consideration of maintenance of law and order requested the Chairman of the Khargram Panchayat Samiti to take necessary steps as the holding of rival hats in contiguous areas could not be allowed to continue as it gave rise to serious law and order problem. A meeting of the Panchayat Samiti was accordingly held on June 20, 1984 and a resolution was passed by a majority of the members that the Nagar Cattle Hat run by Nagar Quorania Junior High Madrassah would be held on Saturday as before and the Sherpur Cattle Hat run by Prabartak Parishad being of recent origin would be held on Friday. Thereupon, respondent no. 6 filed another writ petition in the High Court challenged the impugned resolution of the Panchayat Samiti. A learned Single Judge by his judgment and order dated January 14, 1985 quashed the impugned resolution of the Panchayat Samiti on the ground that it acted in breach of the rules of natural justice while reserving liberty to the Panchayat Samiti to come to a decision afresh after affording an opportunity to respondent no. 6 Prabartak Parishad to have its say before it. Aggrieved, the appellant preferred an appeal and applied for stay. A Division Bench of the High Court by its order dated March 19, 1985 admitted the appeal but declined to grant stay and directed that the Panchayat Samiti should in the meanwhile comply with the order of the learned Single Judge. As a consequence, Khargram Panchayat Samiti was constrained to give effect to the direction made by the learned Single Judge. It accordingly issued notices to the contending parties i.e. both Nagar Quorania Junior High Madrassah and Prabartak Parishad requiring them to submit their claims for consideration, and also fixed a date being April 12, 1985 for hearing. On that date, the Panchayat Samiti at its open meeting heard the representatives of the parties and scrutinised the documents placed before it. After considering the claims of both the parties and the material record, it passed a resolution that the Nagar Cattle Hat would be held as before on Saturday every week and the Sherpur Cattle Hat would be held on Friday, and directed the Executive Officer to incorporate such a condition in the licence granted to the two organisations for holding the cattle fairs on these days. Again, respondent no. 6 filed a writ petition before the High Court challenging the aforesaid resolution dated April 12, 1985. A learned Single Judge by his judgment dated June 19, 1985 dismissed the writ petition in view of the pendency of the appeal before the B C D E F G H

- A Division Bench, pursuant to whose direction the aforesaid resolution had been passed. Respondent no. 5 then moved the Division Bench for restraining Khargram Panchayat Samiti from giving effect to the said resolution. The Division Bench by its judgment under appeal quashed the impugned resolution dated April 12, 1985 of Khargram Panchayat Samiti. It held that although in terms of s. 117 of the Act the
- B Panchayat Samiti was vested with the power of granting a licence for the holding of a hat or fair, by the framing of rr. 7, 8 and 9 of the West Bengal Panchayat (Samiti Administration) Rules, 1984 the power of the Panchayat Samiti is confined to making provision for maintenance of sanitation, health and hygiene in the market area which is the essence of the power under s. 117, and further that in the absence of a provision in the rules in that behalf it had no power to specify a day on
- C which such hat or fair should be held. It accepts that when a power is conferred on a statutory authority, it necessarily carries with the other incidental or ancillary powers and holds that the Panchayat Samiti being vested with the power to grant a licence under s. 117 of the Act had been conferred the power under rr. 7, 8 and 9 to making provision for
- D sanitation, health and hygiene in the market area which is the essence of the power and therefore the Panchayat Samiti had the power to see that sanitation, health and hygiene are properly maintained and looked after, and nothing more. In repelling the contention that the specification of a day for the holding of a hat or fair was consequential to the power to grant a licence under s. 117 of the Act, it observed:

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- “there can be no doubt that when a power is conferred on a statutory authority such power will also include other incidental or ancillary powers without the exercise of which the main power cannot be exercised. In the instant case however, Panchayat Samiti has been conferred with a power to see that sanitation, health and hygiene are properly maintained and looked after. The provisions of Rule 9 of the Rules, as stated already, imposed certain terms and conditions on the grant of license for holding a market or hat, but all these terms and conditions relate to maintenance or sanitation, health and hygiene or supply of water or making proper lighting arrangement. The essence of power is, therefore, the maintenance of sanitation, health and hygiene. Many incidental powers may be exercised by the Panchayat Samiti which are directly related to the exercise of the maintenance of, sanitation, health and hygiene. Such powers are not provided for under Rule 9, yet they could be exercised by the Panchayat Samiti in exercise of
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its power under Rule 9 incidentally. But, in our opinion, the Panchayat Samiti cannot exercise a power which has no connection whatsoever with sanitation, health and hygiene. The reason for fixing different days, viz., Fridays and Saturdays for the holding of the two hats, viz., apprehended breach of peace, has no connection whatsoever with the question of sanitation, health and hygiene. Exercise of such assumed power cannot be said to be incidental or ancillary to the main power for the imposition of terms and conditions of a licence. In case, any breach of peace takes place, it will be a concern of the District Magistrate to take steps for the same."

In our judgment, the view taken by the High Court that although the Panchayat Samiti was vested with the power to grant a licence for the holding of a hat or fair under s. 117 of the Act, yet it had no consequential or incidental power to specify a day for holding of such hat or fair, is manifestly erroneous and cannot be supported. It failed to appreciate that under the Act the power of general administration of the local area vests in the Panchayat Samiti only to grant a licence to hold a hat or fair under s. 117 of the Act, but such power of general administration necessarily carries with it the power to supervise, control and manage such hat or fair within its territorial jurisdiction. The conferment of the power to grant a licence for the holding of a hat or fair under s. 117 of the Act includes the power to make incidental or consequential orders for specification of a day on which such hat or fair shall be held. The decision of the High Court runs counter to the well-accepted principles. It overlooks that the statutory bodies like the Panchayat Samiti enjoy a wide 'incidental power' i.e. they may do every thing which is 'calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions' and the doctrine of *ultra vires* is not to be applied narrowly. It is well-accepted that the conferral of statutory powers on these local authorities must be construed as impliedly authorising everything which could fairly and reasonably be regarded as incidental or consequential to the power itself. See: de Smith's Judicial Review of Administrative Action, 4th edn., p. 95, HWR Wade's Administrative Law, 5th edn., p. 217. Craies on Statute Law, 6th edn., p. 276. *Attorney General v. Great Eastern Railway*, LR (1880) 5 AC 473; *Baroness Wenlock v. River Dee Co.*, LR (1885) 10 AC 354. De Smith in his celebrated work Judicial Review of Administrative Action, 5th edn., at p. 95 puts the law tersely in these words:

A The House of Lords has laid down the principle that "whatever may fairly be regarded as incidental to, or consequent upon, those things which the Legislature has authorised, ought not (unless expressly prohibited) to be held, by judicial construction, to be *ultra vires*."

B This principle was enunciated by Lord Selborne in *Attorney General v. Great Eastern Railway*, supra, in these words: "The doctrine of *ultra vires* ought to be reasonably, and not unreasonably, understood and applied and whatever may be fairly regarded as incidental to, or consequential upon, those things which the legislature has authorised ought not (unless expressly prohibited) to be held, by judicial construction, to be *ultra vires*." These words have been quoted by Professor Wade in his monumental work *Administrative Law*, 5th edn. at p. 217 and also by Craies on *Statute Law*, 6th edn. p. 276. Craies also refers to the observations of Lord Watson in *Baroness Wenlock v. River Lee Co.*, supra, to the effect:

D "Whenever a corporation is created by Act of Parliament with reference to the purposes of the Act, and solely with a view to carrying these purposes into execution, I am of opinion not only that the objects which the corporation may legitimately pursue must be ascertained from the Act itself, but that the powers which the corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions."

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This Court in *V. T. Khazode & Ors. v. Reserve Bank of India*, [1982] 2 SCC 7 has followed the *dictum* of Lord Selborne in *Great*

F *Eastern Railway's* case and reaffirmed the principle that the doctrine of *ultra vires* in relation to the powers of a statutory corporation have to be understood reasonable and so understood, whatever may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorised ought not (unless expressly prohibited) to be held by judicial construction, to be *ultra vires*. It had

G earlier been laid down by a Constitution Bench of the case of *State of Uttar Pradesh v. Batuk Deo Pati Tripathi & Anr.*, [1973] 2 SCC 102 that a power to do a thing necessarily carries with it the power to regulate the manner in which the thing may be done. The High Court failed to appreciate that the power to grant a licence for the holding of a hat or fair under s. 117 of the Act necessarily carries with it the power to

H specify a day on which such hat or fair shall be held. Such power to

specify a day must be held to be a power incidental to or consequential upon the principal power of issuing a licence under s. 117 of the Act for holding of a hat or fair. The rules or the absence of it do not detract from the substantive power conferred by a statute. The essence and content of the power of a Panchayat Samiti under s. 117 of the Act is issuance of a licence for the holding of a hat or fair and not mere maintenance of sanitation, health and hygiene as held by the High Court.

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For these reasons, we have no hesitation in reversing the judgment of the High Court. The appeal must accordingly succeed and is allowed. The judgment and order passed by the High Court are set aside and the writ petition is dismissed. No. costs.

C

A.P.J.

Appeal allowed.