

CIVIL MISCELLANEOUS

Before Prém Chand Jain, J.

RAM KALA,—Petitioner

versus

THE EXECUTIVE MAGISTRATE, 1ST CLASS, KARNAL, AND
OTHERS,—Respondents

Civil Writ No. 704 of 1968.

February 20, 1970

Punjab Gram Panchayat Act (IV of 1953)—Sections 3(p), 6(5) (j), 23 and 82—Fine imposed by Panchayat under section 23—Whether falls under the definition of tax in section 3(p)—Person not paying such fine—Whether disqualified for being elected as Sarpanch or Panch of the Panchayat.

Held, that the definition of word "tax" in section 3(p) of Punjab Gram Panchayat Act, is not explanatory and restrictive. It is an inclusive definition. By using the word 'include' the definition has been enlarged by not limiting it to mean such things as it signifies according to the natural import, but also includes a cess, duty, fee, rate, toll or other impost leviable under the Act. From the plain reading of the definition it is clear that words used in it belong to one family and have analogous meanings. They are of narrow significance and positively do not include fine or penalty. Moreover, a tax is imposed by virtue of the powers under section 82 of the Act while a fine is imposed by virtue of the powers under section 23 of the Act. Both these powers are independent. The Legislature, if it had so intended, could include the words 'fine and penalty' in the definition of the word 'tax'. Hence a person who fails to pay fine imposed by the Panchayat under section 23 of the Act is not disqualified to be elected as Sarpanch or Panch of the Panchayat. (Paras 9 and 12)

Petition under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the impugned order and election of respondent No. 2 to the office of Sarpanch of Gram Panchayat, village Bindrana.

S. P. GOYAL, ADVOCATE, for the Petitioner.

N. C. JAIN, ADVOCATE, for Respondent No. 2, for the Respondents.

JUDGMENT

JAIN, J.—Ram Kala has approached this Court under Articles 226 and 227 of the Constitution of India for the issuance of an appropriate writ, order or direction, quashing the order of the Executive

Magistrate (Prescribed Authority) under section 8 of the Punjab Gram Panchayat Act (hereinafter referred to as the Act), respondent No. 1, dated 20th December, 1967, by which the election petition filed by the petitioner was dismissed (copy Annexure 'A' to the petition).

(2) The petitioner is a member of the Gram Sabha, Bindrana, Tehsil Kaithal, District Karnal, and was a candidate for the office of the Sarpanch for which elections were held in the year 1966. Respondents 2 to 4 also filed their nomination papers. Raghbir Singh, respondent No. 4, withdrew his nomination paper. The nomination paper of the petitioner was rejected on the ground that he was a lessee of the Gram Panchayat and that of respondent No. 3 on the ground that he was in arrears of tax. Thus respondent No. 2 was declared elected to the office of Sarpanch unopposed. The petitioner filed an election petition under section 10B of the Act mainly on the ground that his nomination paper and that of respondent No. 3, were illegally rejected. The Prescribed Authority, respondent No. 1, tried the petition and ultimately dismissed it vide his order dated 20th December, 1967, the legality of which has been challenged by way of this petition.

(3) Mr. S. P. Goyal, learned counsel for the petitioner, did not challenge the correctness of the finding of the Prescribed Authority so far as it relates to the rejection of the nomination paper of the petitioner. The only contention raised by the learned counsel, was that the fine imposed on respondent No. 3 under section 23 of the Act, was not a tax and as such his nomination paper was wrongly rejected. On the other hand it was contended by Mr. N. C. Jain, learned counsel for respondent No. 2, that respondent No. 3's nomination paper was rightly rejected as on the date when he filed his nomination paper, he was in arrears of tax as he had not paid the fine imposed on him under section 23 of the Act. It was also contended that the fine recoverable from respondent No. 3 falls in the definition of tax as given in the Act which reads as under:—

“3(p) “tax” includes a cess, duty, fee, rate, toll or other impost leviable under this Act ;”

(4) Section 6 of the Act describes the constitution of the Gram Panchayat and the disqualifications which deprive a person from contesting the election or continuing to be a Sarpanch or Panch. The

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relevant clause of disqualification with which we are concerned, is in the following term:—

“6(5)(j) has not paid the arrears of the tax imposed by the Gram Panchayat or the Panchayat Samiti; or”

(5) Penalty for disobedience of a special or general order of the Panchayat is provided under section 23 of the Act which reads as under:—

“23. *Penalty for disobedience of a special or general order of the Panchayat.*

Any person who disobeys an order of the Gram Panchayat made under the two last preceding sections, shall be liable to a penalty which may extend to twenty-five rupees; and if the breach is a continuing breach, with a further penalty which may extend to one rupee for every day after the first during which the breach continues :

Provided that the recurring penalty shall not exceed the sum of rupees five hundred.”

(6) The power of taxation is described in section 82 and is in the following terms :—

“82. *Power of Taxation.*

(1) Subject to rules made under this Act or any order made by Government in this behalf a Gram Panchayat shall impose:—

(a) a house-tax payable by the occupier or, where a house is vacant, by the owner :

Provided that if any house remains vacant for a period of one year or more, it shall be exempt from payment of the house-tax;

(b) with the previous approval of Government, a tax on persons carrying on any profession, trade, calling and employment (other than agriculture) in the Sabha area provided such tax has not been imposed in the Sabha area by any other local authority under any law for the time being in force ;

(c) if so authorised by the Government, a duty on transfers of property in the form of a surcharge on the duty imposed by the Indian Stamp Act, 1899, on instruments of sale, gift and mortgage with possession of immovable property situated in the Sabha area at such rate as may be fixed by the Government not exceeding two per centum on, as the case may be, the amount of the consideration, the value of the property or the amount secured by the mortgagee, as set forth in the instrument ;

(d) if so authorised by the Government, any other tax, duty or cess which the Legislature of the State has power to impose :

Provided that if the Gram Panchayat fails to impose the tax, duty or cess Government may take necessary steps to impose it and the tax, duty or cess so imposed shall be deemed to have been imposed by the Gram Panchayat :

Provided further, that the Government may at any time withdraw the authorisation under clause (c) or clause (d) whereupon the tax, duty or cess shall cease to be levied.

2. The following fees may be levied by a Gram Panchayat :—

- (i) teh-bazari from the shop-keepers in fairs other than cattle fairs ;
- (ii) service fee including fee on cleaning of streets and lighting of streets and sanitation ;
- (iii) fees for registration of animals sold in the Sabha area; and
- (iv) water rate where water is supplied by the Gram Panchayat.”

(7) There is no dispute that a fine of Rs. 5 was imposed on Ude Ram, respondent No. 3, for forcible occupation of a piece of land belonging to the Panchayat and that on the date when he filed his nomination paper, this amount had not been paid.

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(8) On the respective contentions of the learned counsel for the parties, the short question that requires determination in this case is whether the fine imposed by the Gram Panchayat on Ude Ram, respondent No. 3, under section 23 of the Act, falls in the definition of 'tax' or not. It is not disputed that in case the answer is in the affirmative, then this petition is to fail and if it is in the negative then it deserves to be allowed. After giving my thoughtful consideration to the entire matter and to the relevant provisions of law referred to above, I am of the view that the answer to the question has to be in the negative and this petition deserves to be allowed.

(9) The definition of the word 'tax' with which we are concerned, is not explanatory and restrictive. It is an inclusive definition. By using the word 'include' the definition has been enlarged by not limiting it to mean such things as it signifies according to the natural import but also includes a cess, duty, fee, rate, toll or other impost leviable under the Act. In the Words and Phrases, Volume 41, at page 116, the word 'tax' is defined to be a rate or sum of money assessed on the person or property of a citizen by Government for the use of the nation or the State. It is also provided that a tax is an impost levied by authority of Government upon its citizens or subjects for the purpose of the State. In Law Lexicon, compiled and edited by P. Ramanatha Aiyer, 1940 Edition, at page 1259, the term 'tax' is defined to mean as a rate or sum of money assessed on the person or property of a citizen by Government for the use of the nation or state; burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes, and the enforced proportional contribution of persons and property levied by authority of the state for the support of Government and for all public needs.

(10) Mr. N. C. Jain, learned counsel for respondent No. 2, conceded that a fine or penalty imposed under section 23 of the Act was not included in the ordinary definition of 'tax' referred to above, nor did it fall in the definition of cess, duty, fee, rate or toll. According to the learned counsel, the fine and penalty imposed under section 23 of the Act would fall in the words "other impost leviable under this Act". In order to judge the correctness of this argument, it would be necessary to look at the definition of the word impost. In Words and Phrases, Volume 20, at page 281, the word 'impost' has been defined in its broader sense to mean "any tax or tribute imposed by

authority and applies as well to a tax on persons as a tax on property". It is further defined to mean, "a duty on imported goods and merchandise. In a larger sense, it is any tax or imposition. Duties and imposts were properly intended to comprehend every species of tax or contribution not included under the ordinary term "taxes and excises".

(11) From the plain reading of the definition of 'tax', it is clear that words have been used which have analogous meaning and as stated by Maxwell on Interpretation of Statutes, 11th Edition, at page 321, "when two or more words which are susceptible of analogous meaning are coupled together *noscuntur a sociis*. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general." The same rule is thus interpreted in Words and Phrases, Volume 14, at page 207, as follows :—

"Associated words take their meaning from one another under the doctrine of "*noscitur a sociis*," the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it and such doctrine is broader than the maxim "*ejusdem generis*". "

The other words used in this definition are of narrow significance and positively do not include fine or penalty. In this situation can it be said that by using the word 'impost' the intention of the legislature was to make the scope of this word correspondingly wider ? In my view from the plain reading of the definition, no such intention can be gathered and the word 'impost' has been used with the other words in the cognate sense. All the words used in this definition belong to one family, and there would be no justification to hold that the words "other impost leviable under the Act" also include fine or penalty imposed under section 23 of the Act.

(12) The matter can be looked at from another angle. The power of taxation is prescribed under section 82 of the Act and a person is disqualified only when he is in arrears of tax imposed by the Gram Panchayat. The Gram Panchayat imposes tax by virtue of the power vested in it under section 82 of the Act. The fine or penalty is imposed by the Gram Panchayat under section 23 of the

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Act and in view of the settled proposition of law of this Court, while imposing fine, the Gram Panchayat acts judicially and discharges criminal functions. A tax is imposed by virtue of the powers under section 82 of the Act while a fine is imposed by virtue of the powers under section 23 of the Act. Both these powers are independent. The Legislature, if it had so intended, could include the words 'fine and penalty' in the definition of the word 'tax'. Thus viewed from any angle, the only possible conclusion that can be arrived at is that a fine or penalty under section 23 of the Act, does not fall in the definition of tax. In this view of the matter, the nomination paper of respondent No. 3 was illegally rejected by the Returning Officer and the contrary finding of the Prescribed Authority cannot legally be sustained.

(13) No other point was urged.

(14) For the reasons recorded above, I allow this petition, quash the impugned order of the Prescribed Authority, dated 20th December, 1967 (copy Annexure 'A' to the petition), and hold that the nomination paper of respondent No. 3 was illegally rejected. Consequently the election of respondent No. 2 as Sarpanch, is set aside. In the circumstances of the case, the parties are left to bear their own costs.

K. S. K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

CHANAN RAM AGGARWAL,—*Petitioner*

versus

THE COMMISSIONER, AMBALA DIVISION, AMBALA
AND ANOTHER,—*Respondents*

Civil Writ No. 2873 of 1969.

February 24, 1970

Constitution of India (1950)—Article 311—District Office Manual—Para 2.10—Date of birth of a Government servant as mentioned in service record—Correction of—Whether can be done only within two years of his joining service—Executive instruction—Whether to be carried out as a whole.

Held, that there are no statutory rules for a Government servant to have the matter of the fixation of his date of birth as mentioned in his service