

## Krishna Kumar vs Municipal Committee on 21 February, 1957

**Bench: N.H. Bhagwati, B. Jagannadhadas, S.J. Imam, P.G. Menon, J.L. Kapur**

CASE NO.:  
Writ Petition (civil) 660 of 1954

PETITIONER:  
KRISHNA KUMAR

RESPONDENT:  
MUNICIPAL COMMITTEE

DATE OF JUDGMENT: 21/02/1957

BENCH:  
N.H. BHAGWATI & B. JAGANNADHADAS & S.J. IMAM & P.G. MENON & J.L. KAPUR

JUDGMENT:

JUDGMENT 2005(8) SCC 612 The Judgment was delivered by : Hon'ble Justice Syed Jafer Imam

1. This is an application under Article 32 of the Constitution against the Municipal Committee of Bhatapara (hereinafter referred to as "the Municipality") alleging that the petitioner's fundamental rights guaranteed by Article 19(1)(j) and Article 14 of the Constitution have been violated by the Action of the Municipality.

2. In Bhatapara there is a market vested in the Municipality known as "Ganj" the use of which is regulated by its bye-laws framed under Section 179 of the Central Provinces and Berar Municipalities Act (Act 2 of 1922) (hereinafter referred to as the Act). At this market transactions of sale and purchase of grain take place. According to the petitioner, he is an Adatya by occupation and carries on his trade as such for sellers of grain in the said market. He has been prevented from carrying on his trade as an Adatya of sellers of grain in the said market by the Municipality in pursuance of a resolution passed by it on 4-9-1949. The employees of the Municipality have been directed under the resolution to stop issuing Ganj receipts to the petitioner. Consequently, the petitioner is unable to enter the market and do his business as an Adatya of sellers of grain. It is further alleged that while the petitioner is being treated in this fashion by the Municipality other Adatyas of sellers of grain are permitted to carry on such business in the market. There has thus been discrimination on the part of the Municipality.

3. In 1935, the Government of the Central Provinces published a notification confirming the bye-laws framed by the Municipality. These bye-laws contained provisions for regulating the use of the market at Bhatapara. Three of those are in the following terms:

"5. (a) Any person other than officers of the Government, members and officers of the Municipal Committee, bona fide purchasers and their adhatias, agents and servants,

bona fide sellers of grain, licensed brokers, measurers, weighmen and hamals entering the Ganj otherwise than on business may be ejected by the Ganj Daroga or Moharrir.

(b) Any person found drunk or disorderly or creating a disturbance in the Ganj shall be immediately ejected by the Ganj Daroga or Moharrir.

6. No person shall enter or attempt to enter the Ganj when directed not to do so by an authorised municipal servant or disobey the instructions issued under the authority of the Committee or of the Ganj Committee with regard to the places where laden carts or animals are permitted to stand.

7. A merchant shall do business in the Ganj either in person or by agent, or through a licensed broker duly empowered by him in writing. Every transaction shall be entered by the Moharrir in the register prescribed by the Notified Area Committee for the purpose. " 4. In 1948, the Municipality passed the following resolution:

"The Committee unanimously resolves that on account of traders doing commission agency business in the Municipal Ganj, appreciable facilities have resulted to village cartmen in disposing of their goods and in securing proper measurement and obtaining ready payments after measurement. Hence in order to have control and supervision over the Arhat system, the following amendment to be made in the Ganj bye-laws and approval of the Provincial Government to the same be obtained. "

The bye-law proposed by this resolution stated:

"14-B. The Municipal Committee shall appoint licensed Adhatias (commission agents) in the Ganj who will help the sellers in prompt disposal of their grains and shall make payment to them of their grains immediately after its measurement. "

The proposed bye-law could not take effect until it had been confirmed by the State Government under Section 178(3) of the Act. The State Government did not confirm the bye-law but required the Municipality to submit a Statement of Objects and Reasons for the proposed amendment of its bye-laws. Thereafter, the Municipality considered the communication of the Government and passed the following resolution on 4-9-1949:

"Now the Committee does not desire to adopt the system of Arhatiyas in its Ganj. The subject is therefore dropped. The Ganj and outpost staff be informed that henceforth they should completely stop issuing Ganj receipts in the name of the Arhatiyas. "

Under Section 53 of the Act, the Deputy Commissioner is authorised, in certain circumstances, to suspend a resolution passed by a Municipality and he was accordingly approached to exercise his power under that section to suspend the abovementioned resolution. The Additional Deputy Commissioner made a report on which the Deputy Commissioner suspended for a month the

resolution passed by the Municipality on 4-9-1949, calling upon the Municipality to submit an explanation. After considering the explanation and hearing the parties concerned, he declined to set aside the resolution passed by the Municipality. The order of the Deputy Commissioner was passed on 7-11-1951. The petitioner filed an application under Article 226 of the Constitution in the High Court of Judicature at Nagpur which was duly considered by the learned Judges of that Court which was dismissed on 18-1-1954. The petitioner did not file a petition for special leave in this Court, but filed the present application under Article 32 of the Constitution on 10-12-1954.

5. The Municipality by its affidavit filed in this Court denied that any fundamental right of the petitioner has been violated by any act of the Municipality or its employees, or that it had discriminated between the petitioner and other Adayas of sellers of grain in the market. According to the case of the Municipality, all Adayas of sellers of grain are refused Ganj receipts in their names as it was discovered that the owners of the grain who brought their produce to the market for sale were being victimised. Previously the grain of the villager was sold in the market by the Adaya as owner thereof. Complaints had reached the Municipality that many villagers who owned the grain did not get a fair price for their produce from the Adaya and in some cases were actually not paid the sale price. In order to put an end to this abuse the Municipality passed the resolution complained against on 4-9-1949, which was in keeping with the provisions of its Bye-law 5(a). According to the Municipality, the petitioner is not prevented from carrying on his business in the market as an Adaya of purchasers of grain nor is he prevented from doing any other business in the market where he is a registered dealer.

6. Before we proceed to consider whether any fundamental right of the petitioner has been violated or that he has been discriminated against by the Municipality, we feel it necessary to point out the inordinate delay which the petitioner has made in filing this petition under Article 32 of the Constitution. Since the passing of the resolution by the Municipality on 4-9-1949 until 1953 when he filed his application under Article 226 of the Constitution in the High Court it may be possible to say that the petitioner was pursuing such remedies as were available to him to get the resolution of the Municipality set aside. There was, however, no justification for the petitioner to allow a period of nearly a year to elapse since the High Court dismissed his application before he filed his application under Article 32 of the Constitution in this Court, particularly as he could have, if he was so minded, filed an application in this Court for special leave to appeal against the order of the High Court. If the petitioner had filed a suit to enforce his supposed fundamental rights immediately after the disposal of his application under Article 226 by the High Court, that suit might by now have been decided. The petitioner has been guilty of gross laches and we could have dismissed the present application on this ground alone. However, as the advocate for the petitioner was fully heard, we propose to deal with the submissions made.

7. We would first take up the question whether the Municipality has been guilty of discrimination against the petitioner. The petitioner has relied upon two Nakka receipts, Annexures B-1 and B-2 to his petition, in support of his allegation that while he is not permitted to transact business as an Adaya of sellers of grain other Adayas are permitted to do so. The receipts themselves afford no inherent evidence to support the petitioner's assertion. The Municipality in its affidavit has denied that those receipts were issued to any Adaya. These receipts were issued to the owners who brought

grain to the market. There is no reason to doubt the affidavit of the Municipality. We are, accordingly of the opinion that there is no reliable material before us to establish that the petitioner is being discriminated against. In such circumstances, there could be no question, if it ever arose, of infringement by the Municipality of the fundamental right under Article 14 of the Constitution.

8. We have examined the bye-laws framed by the Municipality and we find that none of its provisions violates any fundamental right of any citizen of India. Article 19(1)(g) guarantees to all citizens the right to practise any profession, or to carry on any occupation, trade or business. No bye-law of the Municipality in fact prevents any citizen from carrying on his occupation, trade or business in the market. A careful reading of the bye-laws indicates that what the Municipality aimed at was that persons should enter the market on legitimate business. Indeed, the petitioner himself relies on Bye-law 5(a) for his claim that there is nothing in it to prevent an Adatya of sellers of grain from entering the market and carrying on his business.

9. We now proceed to consider whether the resolution dated 4-9-1949 violated any fundamental right of the petitioner. By virtue of this resolution Nakka and Ganj receipts and passes are not issued to the petitioner by the Municipality. Such receipts and passes are issued to the owner of the grain who brings his produce to the market for sale. That the owner of the grain sold at the market has a right to ask for and is entitled to have such receipts and passes issued to him seems obvious enough. What we have to decide is whether a person who is not the owner of the grain to be sold in the market has a similar right. If the answer is in the affirmative then the further question may arise for consideration whether the right is a fundamental right. The bye-laws of the Municipality contain no provision for the issuing of Nakka and Ganj receipts and passes in the name of the Adatya of the owner of the grain brought for sale. With reference to the owner of the grain so brought, the bye-laws provide several regulations intended for his benefit and for the obligations and liabilities incurred by him in stocking his produce at the market. He has to pay the market dues to the Municipality for which he gets a receipt. All sales of grain, except less than a bag, are to be made by auction conducted by the Moharrir of the Municipality. If the seller accepts the bid then the sale is made to the highest bidder and the purchaser is bound to purchase the grain at that price. Thereafter the purchaser has to pay to the seller forthwith two rupees per cart if he has not already deposited twenty-five rupees as security with the Municipality. The purchaser then gets the grains measured between sunrise and sunset and has to pay to the seller the entire sale price within twenty-four hours of the bargain. The sale price must be paid to the seller in the presence of the Municipal Moharrir of the market. The purchaser then has to fill in certain entries in the Ganj receipts in the possession of the seller. The grain remaining on the ground after the measurement is over, belongs to the seller and no broker, measurer or hamal is entitled to any share of it. Under Bye-law 21, no deduction in kind or cost for any grain or commodity exposed for sale or purchase can be demanded by the buyer, Adatyas or weighmen on account of charity, alms, private service or on any other plea. The benefit and the protection afforded by these provisions would not be available to the owner of the grain for sale in the market if the receipts and passes in question were issued in someone else's name and that person is regarded in the records of the Municipality as the owner of the grain. The records of the Municipality, however, should contain an accurate and faithful statement about the transactions of sale and purchase in the market belonging to it and controlled and managed by it. Neither in law nor on the grounds of morality can such records be

expected to be otherwise. The materials before us do disclose that for some time the practice of issuing the receipts and passes in question in the name of Adatyas with respect to sales of grain had grown up and was thought at first to be beneficial to the owners of the grain who brought their produce to the market for sale. In due course, it was, however, realised that in fact this had become an evil practice resulting in loss to the owners of the grain. We have no good reason to doubt the case of the Municipality to the effect that simple villagers, owners of the grain, often were not paid the full amount of the sale price of their grain and in some cases no payment at all was made to them. It was due to the complaints, received by the Municipality that the resolution dated 4-9-1949 was passed with a view to effectively stop the continuance of such practice. The Municipality does not deny the petitioner entry into the market on legitimate business as will appear from its affidavit. What it insists on is that the receipts and passes in question shall be issued in the name of the owner of the grain brought to the market for sale. We think that the Municipality is within its rights to refuse to issue receipts and passes to anyone except the owner with respect to the grain brought to the market for sale. No provision of law has been brought to our notice which gives the right to the petitioner to have receipts and passes issued in his name with respect to grain which does not belong to him. The impugned resolution does not in terms prevent the petitioner from carrying on his business as an Adatya. That resolution merely prohibits employees of the Municipality from issuing Ganj receipts to Adatyas. It was within the competence of the Municipality to direct its employees in that way and no right of the petitioner can be said to have been violated, having regard to the real purpose for which the resolution was passed.

10. Even if the petitioner has a fundamental right under Article 19(1)(g) of the Constitution to carry on his business as an Adatya, the bye-laws of the Municipality do not constitute a general prohibition against him in carrying on such business. The Municipality asserts in its affidavit that by the resolution dated 4-9-1949 it did stop the system of charging "adat" from the sellers of grain by the petitioner and other commission agents carrying on business in the market, as this system was not warranted by any bye-law regulating business in the market. It would be reasonable to infer from this admission and the absence of any mention (sic) of an Adatya of a seller of grain in Bye-law 5(a) that it was (sic not) intended by the bye-laws to prohibit the petitioner and other Adatyas of sellers of grain in the market from carrying on their business as such and (sic but only prohibited them from) receiving Ganj receipts in their own names as sellers though they were in fact merely agents and not owners of the grain to be sold. In our opinion, this amounts to a restriction on the exercise of the petitioner's occupation as an Adatya of a seller of grain but does not amount to a total prohibition. Having regard to the evidence that the market, of which the Municipality is the owner, is primarily intended for the sale of produce of agriculturists and having regard to the various bye-laws which are intended for the protection of such sellers, the restriction is a reasonable restriction on the fundamental right of the petitioner. That being so, the petitioner's grievance that his fundamental right has been violated cannot be legally sustained.

11. In our opinion, there is no merit in this petition and it is accordingly dismissed with costs.