

DR. AMBEDKAR CHALLENGES GWYER AWARD

“Since February 1939 trouble had been brewing in the Rajkot State where a strong agitation was going on for political reforms. Defeated and disappointed by Subhas Bose’s election to the Presidentship of the Congress, Gandhi hurried to Rajkot apparently to settle the State problem, but with an inward desire to create a crisis just at the time of the Tripuri Congress Session over which Subhas Bose was to preside. Dr. Ambedkar was urgently called by the local Depressed Classes to intervene in the dispute regarding their non-inclusion in the Reforms Committee of the State. He therefore, left by air for Rajkot and on the evening of April 18, saw the ruler, the Thakor Saheb, and at night addressed a meeting of the Depressed Classes, urging them to carry on their struggle for political rights.

The next morning he had a talk with Gandhi for forty-five minutes on the question of representation for the Harijans on the Reforms Committee. He stated in an interview at Rajkot that he could not discuss in detail all the points with Gandhi, as the Mahatma had a sudden temperature. He, however, revealed that the suggestion that his, alternative proposal should be submitted to a constitutional expert like Sir Tej Bahadur Sapru was not acceptable to Gandhi. At last Gandhi failed in his attempt to effect a change of heart by his non-violent methods and resorted to coercive methods by appealing to the Viceroy to intervene. Gandhi, the apostle of the principle of change of heart and non-violence, himself publicly confessed that his non-violence had not yet been developed to the fullest power, and so he left Rajkot, to quote his words, with hopes cremated and body shattered.

Accordingly, a few days thereafter Sir Maurice Gwyer, the Chief Justice of the Federal Court, gave an Award on the disputes in the State of Rajkot. Dr. Ambedkar challenged the interpretation of the word “recommend” given by Sir Maurice Gwyer. He stated that Gwyer had given his decision on the footing that “There is

no conclusive precedent for the purposes of the present reference.” Dr. Ambedkar quoted two authorities in support of his assertion, *Knolt vs. Cottee*, and *Johnson vs. Rowlands*¹

Following are the stage to stage details : Editors.

I

“HARIJAN REPRESENTATION IN COMMITTEE

Dr. Ambedkar’s Telegram to Gandhiji

Dr. B. R. Ambedkar, Leader of the Independent Labour Party, has sent the following telegram to Mahatma Gandhi :—

“Would like knowing if Rajkot Depressed classes get representation on the Reforms Committee.”²

II

“ANOTHER CLAIM FOR SEAT

Dr. Ambedkar’s Wire to Virawalla

The Muslim Deputationists to-day denied that the negotiations had broken down and added that they will be seeing Gandhiji again to-night. Meanwhile they are in communication with a prominent Muslim League leader in Bombay to receive instructions.

The Girasyas and Bhayats whose claim for representation on the Reforms Committee have not been accepted are waiting in a deputation on the Thakore Saheb to-night.

The latest claimant for a seat on the Reforms Committees are some members of the Depressed Classes in Rajkot. Dr. Ambedkar has wired to Durbar Virawalla to-day “hope you won’t forget your State representation to Depressed Classes on your Reforms Committee as already promised.”

The First Member of Rajkot Council has handed over the above telegram to Gandhiji.

¹: Keer, pp 322-323.

²: The Bombay Chronicle, dated 14th April 1939.

On behalf of the Thakore Saheb Durbar Virawalla has sent the following telegram to Dr. Ambedkar: "Your wire has been communicated to His Highness. I am directed to say that in spite of His Highness' desire and keenness Mr. Patel is not likely to recommend any representative of the Depressed Class. If you so desire, His Highness will willingly grant an interview to discuss with you how the Depressed Classes could be helped. "—A. P."¹

III

"DR. AMBEDKAR AS STATE GUEST

(From Our Correspondent.)

Rajkot, April 18.

Dr. Ambedkar arrived from Bombay this morning by air and was received by some Girasias at the aerodrome. He was taken to the state guest house in a state car.

Khawaji Hassan Nizami who also arrived with Dr. Ambedkar was received at Anandkunj by Mahatmaji this morning and had a talk with Mahatmaji for an hour.²

IV

"DR. AMBEDKAR SEES THAKORE

(From Our Correspondent.)

Rajkot, April 18.

Dr. B. R. Ambedkar who arrived here this morning in order to study the Harijan problems is returning to Bombay tomorrow. The Doctor interviewed the Thakore Saheb to-night and will see Gandhiji tomorrow.

In the evening prominent Muslim leaders and Bhayats met him and discussed how their negotiations with Gandhiji for representation of their interest in the Reforms Committee broke down.

¹: The Bombay Chronicle, dated 15th April 1939.

²: The Bombay Chronicle, dated 19th April 1939.

Dr. Ambedkar was also closeted with Mr. Virawalla this evening.

It is understood that Dr. Ambedkar will issue a note on the Rajkot question in the light of his discussions with various communities in Rajkot.”¹

V

“DR. AMBEDKARS ALTERNATIVE

Rajkot April 19.

Dr. B.R. Ambedkar, in an interview to the “United Press” stated that he came here not at the invitation of the Rajkot Durbar, but at the invitation of the local Depressed Classes who requested his intervention in the dispute regarding their non-inclusion in the Reforms Committee.

“The first thing I did on my arrival”, he said, “was to ascertain from the Durbar whether they were prepared to have on the Committee a person who was the accredited representative of the Depressed Classes.

Alternative Proposal

“I saw Gandhiji this morning at 11-30 but unfortunately, I could not discuss in detail all the points since he had got sudden temperature. However, I discussed with him an alternative proposal of submission of the formation of the new constitution to a person like Sir Tej Bahadur Sapru or Sir Shivaswami Iyer or any other equally well versed man in constitutional law, before all the classes of the State could put their cases. Gandhiji could not agree to this, his argument being that such a report should be final.”

Dr. Ambedkar left for Bombay this evening by train—United Press.”²

¹: The Bombay Chronicle, dated 19th April 1939.

²: The Bombay Chronicle, dated 20th April 1939.

VI

“DR. AMBEDKAR CHALLENGES GWYER AWARD

Quotes Cases to Show “Recommendation” Is Not Command

Dr. B. R. Ambedkar, in a legal analysis of the Gwyer Award says :—

The award given by Sir Maurice Gwyer on the dispute between the Thakore Saheb of Rajkot and Mr. Vallabhbhai Patel over the interpretation of the word “recommend” is not only of importance to the parties to the dispute but to the general public at large.

The parties to the award being bound by the award the question whether that interpretation is right or wrong may not be of much use to them. The same cannot however be said of the public. To them the question is still full of interest. It is true that the award is not a decision of a court of law. Yet it has behind it all the authority of so great a name as that of Sir Maurice Gwyer.

Last Word With Sardar

For an intelligent appreciation of such principles it is necessary in the first place to state what the contention of the Thakore Saheb was and how it was disposed off by Sir Maurice Gwyer.

Sir Maurice Gwyer sums it up thus, “The gist of Thakore Saheb’s argument is contained in the following sentence in the written case submitted on his behalf. ‘It is obvious that the word “recommend” itself clearly indicates that it (each name) is to be considered and it was open to the Thakore Saheb to reject any of the names on the ground, for instance, that any one of the names recommended was not a suitable person, was incapable or undesirable’. This contention Sir Maurice Gwyer has not upheld.

He says, “In my opinion the true construction is that the Thakore Saheb undertakes to appoint the persons whom Mr. Vallabhbhai Patel may recommend and that he does not re-serve to himself any discretion to reject those whom he does not approve. He is no doubt entitled to criticise the recommendations and to urge reasons for reconsidering them, but, unless it can be shown that any of the

persons recommended is neither the subject nor the servant of the State, Mr. Vallabhbhai Patel is to have the “last word”.

Two Objections

The ground for this conclusion and for the rejection of the Thakore Saheb's contention by Sir Maurice Gwyer are two. To use the words of Sir Maurice Gwyer himself, the first ground is that “no such proposition (as is contended for by the Thakore Saheb) can be based simply upon, the use of the word “recommend” which in itself does not necessarily imply anything of the kind. It may take its colour from the context and accordingly, all the circumstances of the case must be taken into account.”

The second ground is that the Thakore Saheb had not reserved to himself the power to consider the recommendation and therefore he had no discretion to reject the persons recommended by Mr. Vallabhbhai Patel. Sir Maurice Gwyer has referred to the case *Rex-vs-Governors of Christs' Hospital* reported in (1917) I. K. B. 19. But, he does not rely upon it. He makes it quite clear as to why he refers to it. He says, “I only refer to them for the purpose of showing that there is no single principle which regulates cases where one person recommends and another appoints.” Indeed he has proceeded to give his decision on the footing that there is no conclusive precedent for the purposes of the present reference”

Precedent And Principle

With due deference I venture to say that there is a well established principle supported by a precedent which could be invoked in deciding this reference. *Knott-vs-Cottee* (2 Phil 192 equal to 41 E. R. 915) *i.e.* the precedent I have in mind. The facts of the case can be very briefly stated.

‘A’ made a Will and appointed his wife, one Mr. Cottee and one Mr. Ibbettson executors and trustees and he also appointed these three as the guardians of his children. Further ‘A’ recommended that if his wife should die before his son should attain twenty-one. or before his daughters attain that age or marry, the surviving guardian or guardians should place his children, or such of them as should then be minors under the care of his cousin Mary

Prior. 'A's' wife died and the children were placed under the care of Mary Prior by Mr. Cottee the surviving executor and testamentary guardian. The case proceeded on the assumption that the word recommend meant that a binding trust was created on the testamentary guardians so that Mr. Cottee was bound to appoint Mary Prior as the person to take care of the children.

Inherent Powers

The issue was this Did the recommendation take away all the powers of control belonging to Mr. Cottee as the testamentary guardian? In deciding this issue the Lord Chancellor (Lord Denman) said..." I have had frequent opportunities of considering the effect of words of recommendation. One was in a recent case in this Court, where the question was whether a recommendation by the testator, that a certain person should be employed as receiver and manager of his property, gave that person any legal interest.

Another case was of *Shaw vs. Lawless* where the House of Lords laid it down as a rule which I have since acted upon, that, though recommendation may in some cases amount to a direction and create a trust, yet that, being a flexible term, if such a construction of it be inconsistent with any positive provision in the Will. It is to be considered as a recommendation, and nothing more.

In that case, the interest supposed to be given to the party recommended was inconsistent with other powers which the trustees were to exercise; and those powers being given in unambiguous terms, it was held that, as the two-provisions could not stand together, the flexible term was to give way to the inflexible term." Accordingly it was held that notwithstanding the fact that the recommendation was binding it did not take away the powers of control of Mr. Cottee as a testamentary guardian, over the children.

Not Binding Direction

The case is no doubt one relating to trust. But a trust is only another name for legal obligation and whether one speaks of recommendation creating a trust or creating a legal obligation it is

just the same. That being so the case is relevant because it enunciates a very important rule relating to the interpretation of the word 'recommend'. As one can see from the judgment of Lord Denman the rule is that the word 'recommend' cannot be interpreted to mean a binding direction from which there is no escape if such an interpretation becomes inconsistent with the exercise of certain other positive powers vested in the person to whom the recommendation is made.

Now in the case of *Thakore Saheb vs. Vallabhbhai* can it not be said that the position of the Thakore Saheb is the same as that of Mr. Cottee? Can it not be further said that like Mr. Cottee the Thakore Saheb also in his capacity as the Crown possesses certain positive powers? Such as the power to appoint, reject or dismiss any person to or from any place, if it is right to say that the Thakore Saheb stands in the same position at that of Mr. Cottee then how can one escape the conclusion that the rule to be applied in deciding the case of *Thakore Saheb vs. Vallabhbhai* is the rule laid down in *Knott vs. Cottee*?

Another Authority

There is also another authority *Johnson vs. Rowlands* (17 L. J. Ch 438) which can be usefully referred to in this connection. In this case the question was the interpretation of the word recommend as used in a Will. In the Will the testator had said, "I gave the same (a certain amount of money) to be disposed off in such a way as she shall think proper. But I recommend to her to dispose of $\frac{1}{2}$ of it to her own relations." The legatee did not dispose of the $\frac{1}{2}$ to her own relations as recommended by the testator. Question was whether she could depart from the recommendation. The Court held that she could. To use the language of the judgement 'recommendation' may mean command. But it cannot mean command if it is inconsistent with the legal and equitable power of . the person to whom the recommendation is made to depart from the recommendation.

It is true that the language of the letter written by the Thakore Saheb is different from the language of the Will in the *Johnson vs. Rowlands*. But supposing the letter written by the Thakore Saheb

to Mr. Vallabhbhai Patel had been written in these terms: "We have a right to constitute the committee in a way like. But you should recommend to us names of seven persons to be appointed on the committee and we shall appoint them." It is true that in the Thakore's case there is an agreement between him and Vallabhbhai while there was no such agreement between the legatee and her relations in *Johnson vs. Rowlands*. We are not however considering the question whether the agreement is binding on and enforceable against the Thakore Saheb which is made by him in his capacity as the Crown. That is a different question and raises important issues.

The Absent Phrase

The issue with which we are concerned is what is meant by the word 'recommend' and on this issue the case of *Johnson vs. Rowlands* seems to be on all fours with the case of *Thakore Saheb vs. Vallabhbhai Patel*. The absence of the words "we have a right to constitute the Committee in any way we like" in the letter of the Thakore Saheb to Vallabhbhai cannot, I submit, make any difference. Such words must be deemed to be present in every document executed by him as the Sovereign Ruler of Rajkot. Whether they are actually there or not the positive power of constituting the Committee at his pleasure in an inseparable incident of his position and run with him as part of the prerogative of the Crown. Nor does the fact that the Thakore Saheb in his letter did not reserve to himself the power to reject the recommendation of Mr. Vallabhabhai affect the situation.

The question is not whether the Thakore Saheb has reserved for himself the power to reject. The question is whether there is anything in the word 'recommend' which can be said to take away the Thakore's inherent powers of rejection which are always with him and which it was not necessary for him to save by any express stipulation. If this is so, the word 'recommend' cannot be given an interpretation different from the one given to it in these two cases.

Positive Powers

In this as in the other two cases there are on the one hand positive powers of the Thakore Saheb which is an inflexible term and on the other there is recommendation which is always a flexible term. That being so according to the rule the flexible term must give way to the inflexible term. That is to say 'recommend' cannot mean direct or bind.

The case reported in (1917) I. K. B. 19 referred to by Sir Maurice Gwyer seems to be in conflict with the two cases I have referred to. But on a closer examination it will be seen that there is no conflict and the case is easily distinguishable. In 1917 I.K.B. 19 the appointing authority, was 'just' an appointing authority and no more. It had no positive powers which could be said to be in danger of being nullified by interpreting the word 'recommend' to mean a binding direction.

The rule as laid down in the two cases referred to by me seems to be that where there exist positive powers which are capable of being exercised independently, the word recommend cannot mean a binding direction, but where there are no positive powers it may have that meaning. In the two cases referred to by me there were positive powers and therefore the decision was that recommendation did not mean binding direction.

In the case referred to by Sir Maurice Gwyer there were no positive powers and therefore it was held that recommendation could mean a binding direction. The case of Thakore Saheb *vs.* Vallabhbhai is one which in my opinion falls in the class under which the two cases cited by me fall and not under the class of cases reported in (1917) L K. B. 19.”¹

●●

¹ The Bombay Chronicle : dated 2nd May 1939.