

**HIGH COURT OF GUJARAT**

**ASSOCIATED CEMENT COMPANIES LIMITED  
V/S  
CHHAYA GRAM PANCHAYAT**

**Date of Decision:** 07 December 1973

**Citation:** 1973 LawSuit(Guj) 99

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**Hon'ble Judges:** [S H Sheth](#)

**Eq. Citations:** 1975 GLR 400

**Case Type:** Spcial Civil Application

**Case No:** 2076 of 1971

**Head Note:**

**Gujarat Panchayats Act, 1961 (VI of 1962) S.179(1) Gujarat Panchayats (Payment of Lump sum Contribution by factories in lieu of taxes) Rules, 1964 R.4(A) panchayat levying lump sum to be payable by factory owner Panchayat has no unfettered and uncontrolled power to fix any amount as lump sum The State Government entitled to fix reasonable amount.**

**Sub-sec. (1) of sec. 179 of the Gujarat Panchayats Act does not confer upon a gram panchayat an unfettered and uncontrolled power to fix any amount by way of lump-sum. Whatever amount it fixes to which the factory owner or occupier agrees is subject to the approval of the State Government. It is therefore quite clear that the policy of the legislature is to see that a gram panchayat does not enter into lump sum payment agreements light-mindedly or ignorantly. In order to protect the interests of the gram panchayat against such agreements which its office-bearers may enter into the approval of the State Government has been made a condition precedent to its validity. Therefore what a gram panchayat thinks in respect of the lump sum is not of a very material consequence. Reading**

in light of the language used in subsec. (1) of sec. 179 it is clear that sub-rule (2) of rule 4 of Gujarat Panchayats (Payment of Lump sum Contribution by Factories in lieu of Taxes) Rules 1964 requires the State Government to bear in mind only one factor. That factor is that any lump sum which it fixes should not be disproportionately less than the amount which the panchayat would have otherwise received at the normal rates during any financial year. If the State Government thinks that what the panchayat has thought fit is disproportionately less than the amount which it would have received from the factory in normal course it can certainly fix such amount as is reasonable. (Para 4). When the question as to the determination of lump sum payable in respect of octroi duty to a panchayat by a factory arises it is the factory area within the limits of the panchayat which is to be taken into account. Such factory area as is beyond the limits of the panchayat must necessarily be excluded firstly because the panchayat is not concerned with that area and secondly because even if the panchayat is otherwise required to provide all amenities to the factory in its premises it would not be under any legal obligation to provide any amenities to that part of the area which is not within limits. (Para 6).

**Acts Referred:**

[Gujarat Panchayats Act, 1961 Sec 179\(1\)](#)

[Gujarat Panchayats \(Payment of Lumpsum Contribution by Factories in Lieu of Taxes\) Rules, 1964 R 4A](#)

**Final Decision:** Petition dismissed

**Advocates:** K S Nanavati, [I M Nanavati](#), [J R Nanavati](#), [C V Jani](#)

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**Judgement Text:-**

S H Sheth, J

[1] The Associated Cement Companies Ltd. has filed this petition against Chhaya Gram Panchayat under the following circumstances. The petitioner-Company is running a cement factory which is situate partly within the limits of the Gram Panchayat and partly within the limits of Porbandar Municipality in Junagadh District. The total area which the Company's factory and quarters occupy is 278 acres out of which 140 acres fall within

the limits of the Gram Panchayat where the factory is situate and 138 acres fall within the limits of Porbandar Municipality where the residential quarters for the officers and servants of the Company are situate. In June 1956 the Company undertook the construction of its factory. On 3rd January 1959 Chhaya Gram Panchayat was constituted. On 17th May 1961 the Panchayat decided to levy octroi duty. On 18th February 1964 the Gujarat Panchayats (payment of lump sum contribution by factories in lieu of taxes) Rules, 1964 came into force. In August 1966 the factory commenced production. On 24th December 1969 the Company made an application to the Panchayat for fixation of lump sum payment of the octroi duty which would be payable by it during the period commencing from 1st November 1969 and ending on 31st March 1972. The Company stated in its application that its total annual liability in respect of the octroi duty payable to the Panchayat would be Rs. 82,016.08 p. It also stated that it had been spending some amount on the four amenities which it had been providing to its employees in its premises. They were health and sanitation, sports club and other recreation facilities, street lighting and water supply. On 12th January 1970 the Panchayat replied to the Company that the latter was not entitled to any remission from the octroi duty on account of the amounts which it had been spending on providing amenities because they were not provided in the area of the Company under the Panchayat but were provided in the area of the Company under Porbandar Municipality. On 5th June 1970 the Company by its letter offered to pay to the Panchayat Rs. 21000/- per annum in lump sum for the aforesaid period. On 6th June 1970 the Panchayat by its resolution fixed the lump sum payment by the Company in respect of its liability to pay octroi duty to it at Rs. 40,000/- per annum. On 22nd July 1970 the Company made an application to the State Government for fixing a reasonable amount of lump sum because it thought that the Panchayat had been demanding from it more than it should demand. That application was made under sec. 179 of the Gujarat Panchayats Act, 1961 read with Rule 8 of the aforesaid Rules. On 31st August 1971 the State Government, after hearing the parties, made an order fixing the lump sum payment by the Company in respect of the octroi duty payable to the Panchayat at Rs. 70,000/- per annum for the aforesaid period.

**[2]** It is this order which is called in question in this petition.

**[3]** Mr. K. S. Nanavaty, appearing for the petitioner, has raised before me two contentions which are as follows:

1. The State Government had no jurisdiction or authority to fix the amount of

lump sum contribution in excess of the amount fixed by the Gram Panchayat by its resolution dated 6th June 1970.

2. The State Government while making the impugned order ought to have taken into account the facilities which the Company actually provided to its employees on its premises particularly because the Gram Panchayat did not provide them.

**[4]** In order to examine the contentions raised by Mr. K. S. Nanavaty it is necessary to turn to sec. 179 of the Gujarat Panchayats Act, 1961. Sub-sec. (1) thereof provides that subject to the rules which may be made under the said Act and having regard to the fact that a factory itself provides in the factory area all or any of the amenities which a panchayat provides, a gram panchayat may arrive at an agreement with any factory with the sanction of the State Government to receive a lump-sum contribution in lieu of all or any of the taxes levied by the panchayat. Sub-sec. (2) provides that where an agreement contemplated by sub-sec. (1) is not reached between the parties, the matter may be referred to the State Government in the prescribed manner and that the State Government may, after giving to the Panchayat and the factory concerned an opportunity of being heard, decide the amount of such contribution. This sub-section makes the decision of the State Government thereunder binding on the panchayat and the factory concerned. The Company invoked the aid of sub-sec. (2) of sec. 179 when it applied to the State Government after it and the Panchayat had failed to arrive at an agreement contemplated by sub-sec. (1). Rule 3 of the aforesaid Rules prescribes the manner in which an application under sub-sec. (2) of sec. 179 can be made. Rule 4 provides for the consideration of the application. Sub-rule (2) of Rule 4 provides that the amount of lump-sum payment should not be disproportionately less than the amount receivable by the panchayat in respect of taxes levied by it at the normal rates during any financial year after deducting cost of amenities, if any, provided by the occupier. The Panchayat by its aforesaid resolution decided that Rs. 40,000/- per annum should be the lump sum which the Company should pay to the Chhaya Gram Panchayat on account of the octroi duty payable by it. The State Government has ignored that resolution of the Gram Panchayat and has fixed Rs. 70,000/-. Whereas on one hand the Panchayat was prepared to accept Rs. 40,000/- as lump-sum payment and the Company was agreeable to pay only Rs. 21,000/-, the State Government has fixed it at Rs. 70,000/-. The question, therefore, canvassed by Mr. K. S. Nanavaty before me arises in the following form;

Can the State Government ignore the decision of the Panchayat and arrive at its own conclusion ?

Firstly, sub-sec. (1) of sec. 179 does not confer upon a gram panchayat an unfettered and uncontrolled power to fix any amount by way of lumpsum. Whatever amount it fixes to which the factory owner or occupier agrees is subject to the approval of the State Government. It is, therefore, quite clear that the policy of the legislature is to see that a gram panchayat does not enter into lump sum payment agreements light-mindedly or ignorantly. In order to protect the interests of the gram panchayat against such agreements which its office-bearers may enter into the approval of the State Government has been made a condition precedent to its validity. Therefore, what a gram panchayat thinks in respect of the lump sum is not of a very material consequence. Reading in light of the language used in sub-sec. (1) of sec. 179 I find that sub-rule (2) of Rule 4 requires the State Government to bear in mind only one factor. That factor is that any lump-sum which it fixes should not be disproportionately less than the amount which the panchayat would have otherwise received at the normal rates during any financial year. Indeed, the State Government is required to hear the panchayat and the factory concerned before it makes any order in this behalf but it does not necessarily mean that the State Government is bound down to what the panchayat has thought of the matter. If the State Government thinks that what the panchayat has thought fit is disproportionately less than the amount which it would have received from the factory in normal course, it can certainly fix such amount as is reasonable.

**[5]** The next question is whether Rs. 40,000/- which the Panchayat thought fit to fix by its resolution dated 6th June 1970 is disproportionately less than Rs. 82, 016. 08 p. which the Company was admittedly liable to pay to the Panchayat per year. There is no doubt in my mind that Rs. 40,000/- is disproportionately less than Rs. 82,016/-. I am, therefore, of the opinion that the State Government after having borne in mind the principles laid down in sec. 179 of the Gujarat Panchayats Act and Rule 4 of the aforesaid Rules has arrived at a correct conclusion which is unassailable in law. The first contention raised by Mr. K. S. Nanavaty, therefore, fails and is rejected.

**[6]** His second contention also turns upon the applicability of sub-rule (2) of Rule 4 of the aforesaid Rules which provides that the cost of amenities which a factory provides on its premises should be deducted out of the lump sum. Sub-sec. (1) of sec. 179 also lays down that regard should be had to the amenities which a factory provides in the factory area. Mr. K. S. Nanavaty has argued that what is to be taken into account is the entire factory area in which a company provides amenities and also the persons to whom it provides and not that part of the factory area which is situate within the limits of the Panchayat. In my opinion, when the question as to the determination of lump sum payable in respect of octroi", duty to a Panchayat by a factory arises, it is the factory area within the limits of the Panchayat which is to be taken into account. Such factory area as is beyond the limits of the Panchayat must necessarily be excluded firstly because the Panchayat is not concerned with that area and secondly because even if the Panchayat is otherwise required to provide all amenities to the factory in its premises, it would not be under any legal obligation to provide any amenities to that part of the area which is not within its limits. To ask a Panchayat to provide amenities to persons residing 'beyond its territorial limits is contrary to the scheme of the Gujarat Panchayats Act. Such persons do not have any right whatsoever against the Panchayat to demand any amenities from it. The State Government, therefore, in my opinion, was justified in excluding from its consideration the amenities which the Company had been providing to its employees in that part of its factory area which is beyond the territorial limits of the Panchayat. The State Government has taken into account such amenities in that part of the factory area as is within the limits of the Panchayat. In my opinion, the impugned order, therefore, does not suffer from any infirmity.

**[7]** The petition, therefore, fails and is dismissed. Rule is discharged with costs.

Petition dismissed.