

Emperor Vs. Parshottam Jagjivan

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Court : Mumbai

Decided On : Apr-26-1923

Reported in : AIR1924Bom47; (1923)25BOMLR767

Judge : Kajji and ;Shah, JJ.

Appeal No. : Criminal Application for Revision No. 48 of 1923

Appellant : Emperor

Respondent : Parshottam Jagjivan

Judgement :

Shah, J.

1. In this case the petitioner seeks to have the order of conviction against him revised, The accused has been convicted by the Sub-Divisional Magistrate of Surat of refusing to furnish information required by the Municipality under bye-law 4 framed under Section 48(f) of the Bombay District Municipal Act, 1901. The Municipality called upon the petitioner to furnish information which they required with regard to children of school going age and they purported to do so under the said bye-law. The petitioner refused to furnish the information. Consequently he was prosecuted for a breach of this bye-law; and he was sentenced under bye law 5 to pay a fine of Rs. 2.

2. Then he made an application to the Sessions Court with a view to have this matter referred to this Court. But the learned Sessions Judge declined to refer the case to this Court.

3. The present application is made to this Court to have the conviction and sentence set aside. The application is supported on two grounds?

4. First, it is urged that bye-law 4 is invalid in so far as it requires information with regard to the census of children of school going age for the purpose of the Bombay Primary Education (District Municipalities) Act, 1918. It appears that in 1919 under Section 3 of the Act it was declared that the provisions of that Act would be applicable to the Municipal district constituted under the Municipal Act. The Government have framed and published rules under Section 18 of the Act which confers powers upon them to frame such rules for the purposes of the Bombay Primary Education Act of 1918. It is urged that as the Local Government have got powers to frame rules under this Act of 1918, the Municipality cannot have any power to frame bye-laws under the Municipal Act for the purpose of carrying out their obligations under the Primary Education Act. That, however, does not appear to me to be right because it is provided by Section 1(3) of the Act of 1918 that 'it shall be construed as part of and supplementary to the Bombay District Municipal Act, 1901, hereinafter called 'the Principal Act. 'Under Section 48(f) of the principal Act the Municipality have the power, with the previous sanction of the Governor in Council, to make bye-laws so far as they are not inconsistent with the Act, among other things, with reference to the taking of a census within the Municipal district. Bye-law 4 provides:

Whenever a census is undertaken by the Municipality or the School a Committee every occupier of a building in municipal limits shall on demand supply to the best of his knowledge and ability to any officer authorised in this behalf by the Municipality all information that such officer may require of him either orally or in writing in a printed form supplied by the Municipality with regard to himself and all occupants of the same building who are either members of or servants in the family & c

5. It is clear that this bye-law is framed so as to meet the requirements of Bombay Act I of 1918. Under that Act read with the rules framed by the Local Government under that Act it is obligatory upon the Municipality to keep a register of the children of school going age ; and with a view to fulfil that obligation it was open to the Municipality to frame a bye-law which would enable them to take a census of such children within the Municipal area. In order to keep such a register certain information would be necessary and the Municipality were entitled under this clause of the principal Act to take the power to demand such information from persons living within the municipal area, The bye-law does not appear to me to be in any way inconsistent with the principal Act or with the rules made by the Local Government under Act I of 1918. The powers of the Municipality to frame bye-laws under Section 48 of the principal Act are not in any way curtailed by the powers conferred under Section 18 of Act I of 1918 upon the Local Government to frame rules for the purposes of the Act. I am unable to accept the contention urged on behalf of the petitioner that the bye-law is invalid.

4. The second point urged in support of the application is that by a resolution of the Municipality dated January 12, 1922, the Act of 1918 ceased to have operation within this Municipal area. It does not appear, however, that the resolution of the Municipality rescinding the prior notification of 1919 was published in the [Local Government Gazette, nor does it appear to have received the previous sanction of the Local Government. Under Section 21 of the Bombay General Clauses Act (I of 1904) the Municipality would have the power of rescinding the notification published in 1919 subject to the sanction and conditions, to which the first notification was subject. That means that it would be open to the Municipality to cancel their previous notification with the previous sanction of the Local Government and by publication in the Local Government Gazette as provided by Section 3 of the Act of 1918. It is not suggested in the course of the argument that the resolution of the Municipality dated January 12, 1922, ever received the sanction of the Local Government: and it is conceded that it was never published in the Bombay Government Gazette. Therefore the Act of 1918 was in operation in this area, at the date the information in question was demanded from the petitioner. This contention also must be disallowed. Section 16 of the Bombay Primary Education (District Municipalities) Act of 1918, to which reference has

been made in the course of the argument, and under which the Local Government have the power to cancel a notification under Section 3 of the Act, has so application to the facts of this case.

5. We discharge the rule.

Kajji, J.

6. I agree.

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