

Dalip Chand and ors. Vs. the Mukhya Nagar Adhikari and anr.

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Court : Allahabad

Decided On : Nov-19-1962

Reported in : AIR1964All46

Judge : Jagadish Sahai and ;Mithan Lal, JJ.

Acts : Uttar Pradesh Municipalities Act, 1916 - Sections 298 and 298(2); [Constitution of India](#) - Articles 14 and 19; Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 - Sections 541, 577 and 581

Appeal No. : Writ Petn. No. 134 of 1961

Appellant : Dalip Chand and ors.

Respondent : The Mukhya Nagar Adhikari and anr.

Advocate for Def. : B.L. Kaul, Adv.

Advocate for Pet/Ap. : N. Banerji, ;A.K. Mitra and ;R.C. Sinha, Advs.

Disposition : Petition dismissed

Judgement :

Jagadish Sahai, J.

1. Dalip Chand and Ramdin have filed this petition under Article 226 of the [Constitution of India](#) on the following allegations.

2. Dalip Chand was the owner of a rickshaw the number of which is 2462. He holds a driver's licence for the said rickshaw for the current year 1962-63. He, however, had no driver's licence for the year 1961-62. On the night between the 12th and 13th of June, 1961, he was detected by the police driving the rickshaw without a licence and was detained and taken in police custody for the same. The rickshaw was also taken by the police in its custody. Dalip Chand and Ramdin were later on prosecuted and sentenced to pay a fine of Rs. 6/- each by a Magistrate. By means of this petition the validity of bye-laws Nos. 3(f)11 and 12(a) of the Lucknow Municipal Board have been challenged. There is also a prayer that the fine paid by the petitioners be refunded to them. There is, however, no prayer for the quashing of the order convicting and sentencing the petitioners nor has the Magistrate who convicted and sentences the petitioners been made a party.

It seems that the petitioners have acquiesced in their conviction inasmuch as they have not filed any revision application either under section 435 or section 439 of the Code of Criminal Procedure, nor an appeal, if one lay, challenging the order convicting and sentencing them. The fine paid by the petitioners has gone to the State treasury and under these circumstances no writ of mandamus can obviously be granted to the petitioners commanding the Mukhya Nagar Adhikari and the Up Mukhya Nagar Adhikari who alone are parties to this petition to refund the fines paid by the petitioners and the writ petition to this extent is clearly misconceived. However, in view of the fact that the petitioners' are required to take a licence every year and there is a recurring liability on their part of being convicted and sentenced for the breach of the impugned bye-laws the vires of the Dye-laws has got to be investigated by this Court.

3. The impugned bye-laws read as follows :

'3 (f). No person shall act as a driver or a coolie within Municipal limits unless such person holds driver's or coolie's licence granted by the Executive Officer and unless he has applied for and got his name noted in the register mentioned in bye-law 3 (c) or (e).

11. Any police officer or the Executive Officer may at any time demand the inspection of a licensed rickshaw, a driver's or coolie's licence, or a rickshaw

licence, and! the driver or coolie or any person in charge of the rickshaw shall be bound to comply with the demand:

Provided that a six monthly general inspection of rickshaw and licences will be carried out by the Executive Officer during October and November each year. 12(a) If the rickshaw is found on the road with an unlicensed driver or coolie or the rickshaw itself be unlicensed and the police officer or the executive officer is not satisfied about the correctness of the name and address given by the person in charge of the same, the officer concerned may order the rickshaw to be taken to the Municipal Officer and the rickshaw may be detained and kept at such suitable place or places as may from time to time be fixed by the Executive Officer, till such time as the name and address of the person concerned is satisfactorily ascertained for the purposes of a prosecution under these bye-laws.'

These bye-laws purport to have been framed under the provisions of Section 298 (2) read with list I-H(c) and (d) of the U. P. Municipalities Act (hereinafter referred to as the Municipalities Act) (See gazette notification No. 403/XXXII-10(1) (1)-56-57) dated 22-12-1957. It is the common case of the parties that the impugned bye-laws have been confirmed by the Commissioner and have been published as required by Sub-section (2) and Section 301 of the Municipalities Act. It is not necessary to go into the allegations made in the counter and the rejoinder affidavits because the submissions by the parties that have been made before us are purely those of law and it is not necessary to advert to facts other than what we have already mentioned above.

4. We have heard Mr. Banerji for the petitioner and Mr. Kaul for the respondent Nagar Mahapalika.

5. Mr. Banerji has made two submissions before us. The first one is that in view of the fact that for the purposes of the City of Lucknow, the U. P. Municipalities Act, 1916, has been repealed by the Nagar Mahapalika Act, the impugned provisions do not survive and are no longer good law. The second one is that the impugned bye-laws infringe the provisions of Arts. 14 and 19 of the [Constitution of India](#).

6. Before we consider the submission of Mr. Banerji in details, in order to facilitate the understanding of the points raised before us we would like to reproduce certain provisions of the U. P. Nagar Mahapalika Act. Section 581 of the Act reads as follows:--

'581. Repeal.--The U. P. Municipalities Act, 1916, the U.P. Town Areas Act, 1914, the U.P. Town Improvement Act, 1919, the U.P. Town Improvement (Appeals) Act, 1920, the U.P. Town Improvement (Adaptation) Act, 1948, the U.P. District Boards Act, 1922, the U.P. Local Bodies, (Appointment of Administrators) Act, 1953, and the Cawnpore Urban Area Development Act, 1945, shall, with effect from the appointed day, stand repealed in so far as they may be applicable to any area included in the City.'

Section 577 (a) of the Act reads as follows:--

'577 (a) any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission registration rule, bye-law, regulation form made, issued, imposed or granted under the U. P. Municipalities Act, 1916, or the Cawnpore Urban Area Development Act, 1945, or the U. P. Town Improvement Act, 1919, or any other law in force in any local area constituted to be a City immediately before the appointed day shall, in so far as it is not inconsistent with the provisions of this Act, continue in force until it is superseded by any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission, registration, rule, bye-law, or form made, issued, imposed or granted under this Act or any other law as aforesaid, as the case may be.'

The case of the Nagar Mahapalika is that under the provisions of Section 577(a) of the Act, inter alia, any bye-law or registration framed under the Municipalities Act in so far as it is not inconsistent with the provisions of the Act would continue to be in force until it is superseded by any bye-law, or. . . issued, imposed or granted under the Act or any other laws, as the case may be. It is contended that the impugned bye-laws which were made under the provisions of the Municipalities Act, not being inconsistent with the provisions of the Act, would be deemed to be in force and inasmuch as they have not been so far superseded, they continue to exist. Mr. Banerji's contention is that the impugned bye-laws are inconsistent with

the provisions of the Act We are unable to accept this submission. The Act does contemplate the regulation of trades and the imposition of fees. It is true that there is nothing in the Act which would completely correspond to Section 298 of the Municipalities Act, but in substance and spirit, the principles underlying Section 298 of the Municipalities Act have been incorporated in the Act also.

Mr. Banerji's submission is that inasmuch as under the provisions of Section 451 of the Act it is the Mukhya Nagar Adhikari who can grant a licence and impose a fee, the requirement of a licence and the payment of fee under a bye-law militates against the statutory, functions of the Mukhya Nagar Adhikari and thus the existence of the impugned bye-laws is inconsistent with the provisions of the Act. We are unable to accept this submission. What Section 451 of the Act provides for is the administrative enforcement of the rules, regulations, bye-laws and other statutory provisions requiring the taking of a licence and the payment of fees and not the power to make statutory provisions or pass statutory orders requiring the taking of a licence and the payment of fees. The Mukhya Nagar Adhikari can act only in the executive field and not the legislative one. Sub-section (1) of Section 451 only deals with the power of granting a licence which should not be confused with the power of either requiring a licence to be taken or the power to levy a fee or for prescribing conditions under which a licence is required to be taken and fee to be paid. No other provision was brought to our notice by Mr. Banerji in order to support the submission made by him that the impugned bye-laws are inconsistent with the provisions of the Act.

We have already said above that the provisions of Section 581 of the Act clearly repealed the Municipalities Act for Lucknow and some other cities but by virtue of Section 577 (a) of the Act, the bye-laws framed under the Municipalities Act still continue to remain in force. The provisions of Section 24 of the U.P. General Clauses Act are similar to Section 577 (a) of the Act and would have kept alive the impugned bye-laws even though Section 577(a) of the Act may not have been there. Section 24 of the U.P. General Clauses Act reads as follows:

'24. Continuation of appointments, notifications, orders etc., issued under enactments and repealed and re-enacted. Where any enactment is repealed and

re-enacted by an Uttar Pradesh Act, with or without modification then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted.'

In this connection we would also like to reproduce below the provisions of Section 541 of the Act so far as relevant for our purposes:

'541. Bye-laws for what purpose to be made. The Mahapalika may from time to time make bye-laws, not inconsistent with this Act and the rules, with respect to the following matters, namely:

(36) Securing the protection of public markets, gardens, public parking places and open spaces vested in or under the control of the Mahapalika from injury, or misuse, regulating their management and the manner in which they may be used by the public and providing for the proper behaviour of persons in them;

(41) fixing of fees for any licence, sanction or permission to be granted by or under this Act:

(49) Carrying out generally the provisions and intentions of this Act.'

Clause (36) of Section 541 incorporates the main provisions of Sections 291, 292, 293 and 298 of the Municipalities Act. Clause (41) of that Section is almost in the same terms as Section 294 of the Municipalities Act and Clause (49) is analogous to Sub-section (1) of Section 298 of the Municipalities Act. It appears that the provisions which were scattered in the Municipalities Act have been all brought together in Section 541 of the Act. Under the provisions of Clause (41) of Section 541 of the Act, a Mahapalika can make a bye-law fixing a fee for any licence sanction or permissions and under the provisions of Clause (49), it can frame a bye-law for carrying out the provisions and intentions of the Act. Section 114 of the Act deals with the obligatory duties of the Mahapalika and Section 115 with its

discretionary functions.

The relevant parts of Section 114 of the Act read as follows:

'114. Obligatory duties of the Mahapalika--It shall be incumbent on the Mahapalika to make reasonable andadequate provisions, by means or measures which it is lawfully competent to it to use or to take, for each of the following matters namely-

(xi) preventing and checking the spread of contagious,infectious and dangerous diseases:

(xxi) the construction and maintenance of publicmarkets and slaughter-houses and the regulation of allmarkets and slaughter-houses:

(xxx) regulation of traffic and provision of traffic signs,' It is an obligatory function of a Mahapalika to construct and maintain markets and to regulate the same. Under Clause (36) of Section 541, it has been given powers to discharge this function effectively. Therefore, even if the impugned bye-laws had actually been framed under We provisions of the Act, it could not have been said that the same were ultra vires. That being so, it cannot at an be said that the bye-laws are inconsistent with the provisions of the Act. We therefore reject the first submission of the learned counsel.

7. Coming to the second submission it may at the outset be stated that it is well settled that the State has power to impose reasonable restrictions on the enjoymentof any of the rights conferred by Article 19. It is admitted that the Municipal Board had the power to frame the impugned bye-laws. As to what are reasonable restrictions will always depend upon the facts of each case. Nothing has been shown to us to justify the conclusion that thereis anything unreasonable in the impugned bye-laws. It was held by the Supreme Court in Cooverjee B. Bharucha v. Excise Commr. Ajmer, AIR 1954 SC 220 that reasonablerestrictions can extend even to the prohibition of the trade itself. That of course, was a case relating to an obnoxious trade, i.e. to a trade in spirits and liquors. Whereas Mr. Banerji has not been able to say anything with regard to the first two bye-laws, he has strenuously contended that bye-law 12 (a) is ultra vires because it places in

the hands of officers of police and the staff of the Mahapalika the power to detain a vehicle if they are not satisfied about the name and the address of the person who is in charge of the same. Nothing has been shown to us to justify the conclusion that such a power could not be placed in the hands of the police or the officers or the Mahapalika.

8. Mr. Banerji then contended that the Municipalities Act conferred on the Board the power of regulating the trade and imposing a licence fee but not the power to detain a vehicle which was being driven without a licence. Such a power being ancillary by implication exists. In *Matajog Dobey v. H.C. Bhari*, (S) AIR 1956 SC 44 the Supreme Court held that every officer or authority has got implied ancillary powers to do such acts which are necessary in order to exercise the powers expressly conferred upon it. Consequently, the power to detain a rickshaw being in the nature of an ancillary power must be held to be implied.

9. In the end it was contended that as the notification shows the impugned bye-laws purport to have been framed under Section 298(2) read with list I-H(c) of the Municipalities Act and not under Section 298 (1) of The Municipalities Act, the same are invalid because the power to frame a bye-law is conferred by Section 298(1) and not Section 298 (2) of the Municipalities Act. The submission is in utter disregard of the language of Section 298 (2) of the Municipalities Act which opens with words 'in particular and without prejudice to the generality of the powers conferred by Sub-section (1) the Board of a Municipality wherever situated may in the exercise of the said power make any' The impugned bye-laws have been framed under Section 298 (2) and not under Section 298(1) of the Municipalities Act and there is no omission in the notification. Even if there had been some omission in the notification or if a wrong provision had been mentioned therein, inasmuch as the Board had the power to frame the bye-laws any defect in mentioning the source of power would not have been fatal.

(See *Berar Swadeshi Vanaspathi v. Municipal Committee Sheogan*, AIR 1962 SC 420. We find nothing in *Municipal Board, Lucknow v. Sardar Iqbal Singh*, AIR 1958 All 853 or *Iqbal Singh v. Municipal Board, Lucknow*, AIR 1959 All 186 which were cited before us on the basis of which we can hold that the Municipal Board of

Lucknow had no power to frame the impugned bye-laws under the provisions of Section 298 of the Municipalities Act. In neither of these two cases, the point was directly raised. In any case, under the provisions of Section 294 the Municipal Board, Lucknow, Could have fixed a licence fee and for that reason it cannot be urged that the Municipal Board, Lucknow, had no power to impose a licence fee. We therefore, overrule the second submission of the learned counsel also. No other submission has been made before us.

10. We are satisfied that there are no merits in this petition. It is accordingly dismissed but we direct the parties to bear their own costs.

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