

Emperor Vs. Bal Kishan

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Court : Allahabad

Decided On : Apr-29-1902

Reported in : (1902)ILR24All439

Judge : Knox, J.

Appellant : Emperor

Respondent : Bal Kishan

Judgement :

Knox, J.

1. One Bal Kishan, a servant, has been convicted of an offence falling under Rule No. 10 of Rules under Section 128, Clause (c) of the N.W.P. and Oudh Municipalities Act, 1900, and been sentenced to pay a fine of Rs. 15. I am asked to revise this order, upon the ground that the Municipal Board had no authority in law under Section 128, Clause (c), to frame a rule of this kind; further, because the rule was not necessary for the prevention of danger or grave inconvenience to the public; and thirdly, because the bye law is unreasonable in itself. The bye-law in question runs as follows: 'No coolie, whether bearing loads or not, no servant, except in attendance on his master, and no prostitute shall use the Upper North Mall at any time.' The facts of the case are not questioned. They are very briefly that the petitioner, a servant, and not in attendance on his master, was found at 2 p. M., on the 13th August, 1901, walking with a letter towards Talli Tal along the

Upper North Mall.

2. Now the power given to Municipalities under Section 128, Clause (c) of the N.W.P. and Oudh Municipalities Act, 1900, is undoubtedly a very large and wide power, and therefore one to be exercised with great discretion. The Board is under it authorized to make rules for prohibiting any description of traffic in the streets of Naini Tal, where such prohibition appears to the Board to be necessary for the prevention of danger or grave inconvenience to the public. It is contended on behalf of the Board that as the law has made them sole arbiters of what is necessary for the prevention of danger or grave inconvenience to the public, and that as they consider the use of the Upper North Mall by a servant, except when in attendance on his master, and at any hour of the day and night, a matter of grave inconvenience to the public, there is nothing further to be said. If the matter be one of grave inconvenience, the proof of it must be an easy matter. It does not appear from the judgment, nor from any arguments addressed to me, wherein consists the grave inconvenience to the public of servants using the Upper North Mall. No inconvenience, grave or otherwise, was shown even in argument, nor is it apparent at first sight wherein the grave inconvenience lies. It is intelligible that strings of coolies bearing loads may be inconveniences, and might be, under certain circumstances, grave inconveniences to the public. But it is difficult to distinguish between the case of a servant carrying a letter, as in the present instance, and a person of similar position in life, say a carpenter or a blacksmith passing along the Upper North Mall. The servant would be under the bye-law, if it be a good bye-law, committing an offence; the independent carpenter or blacksmith would be committing none. Both are or are not doing acts of a precisely similar nature. All bye-laws and rules of the same nature have to be very carefully construed, and the invariable rule of law is that they are to be construed in favour of the subject. The rule of law prevailing in England that a bye-law may be examined in order to discover whether it is reasonable in itself is a very sound rule, and no authority has been shown to me confining such a construction to bye-laws in England. This is indeed conceded by the argument of the counsel for the Municipality, in that he contended that the present bye-law is not an unreasonable one. After fully considering all the arguments that have been addressed to me, it appears to me that the bye-law is not a reasonable one. The distinction made

between a person who is a servant and a person of similar degree who is not a servant is both invidious and unreasonable. It would also appear that the bye-law, if strictly construed, would lead up to impossibilities. There are shops and places which abut immediately on the Upper North Mall. How is a servant at point A, abutting upon the Mall, to proceed to point B, similarly abutting on the Upper North Mall, without using the Upper North Mall for the purpose? The only answer given was, that the spirit of the bye-law must be looked to, not the strict letter. This Court has held on previous occasions that where such grave power as this is entrusted to Municipalities, it behoves them to be extremely careful in framing their bye-laws so as to leave no room for doubt as to what is meant by them.

3. There are certain remarks in the judgment which I cannot pass over as unimportant. The learned Magistrate who tried the case speaks of the case as being a trivial one, and adds, '*but where it is well-known that defiance has been and is being offered to these rules, some fine must be imposed which would be held by the accused to be a real punishment.' These remarks are distinctly out of place in a case where the evidence discloses no intention to act in defiance of the law. The act of the servant is in itself a harmless act; there is no evidence that he or any one else acted contumaciously. There is no presumption in law in favour of the existence of contumacy or wilful defiance. The learned Magistrate was wrong in making any such presumption. It was suggested that the case was a test case. If it be so, there is no defiance of law in instituting a test case.

4. I hold that the present rule is one which, as it stands, the Board had no authority to pass. It seems to me doubtful whether the passing of a servant along a road falls within the term 'traffic.' This point was, however, not argued, and my judgment proceeds upon the ground that grave inconvenience to the public has not been shown, and the rule, as it stands, is an unreasonable one. I confine my judgment to the immediate matter before me, viz., the using the Upper North Mall by a servant not in attendance on his master. No other point in the bye-law arises for decision. I accordingly set aside the conviction and the fine, and direct the latter to be refunded.