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Court : Allahabad

Decided On : Aug-21-1957

Reported in : 1958CriLJ115

Judge : Oak, J.

Appellant : Hamid and anr.

Respondent : State

Judgement :
ORDER

Oak, J.

1. These seven connected revisions have been filed by ten persons, who were convicted by the learned Special Magistrate, first class, Baraut, district Meerut, under Seciton 299, U. P. Municipalities Act. Amin Nagar Sarai is a Town Area in district Meerut. The ten applicants are residents of Amin Nagar Sarai, and are butchers.

2. According to the prosecution, the Town Area Committee, Amin Nagar Sarai passed on 23-3-1948 a resolution prohibiting the slaughter of cows, buffaloes and other animals, and forbidding the sale of meat of these animals within the limits of the Town Area. The bye-law was duly confirmed by the Sub-Divisional Magistrate of Baghpat, On 16-10-1952 the ten applicants slaughtered a buffalo within the

limits of the Town Area, and they sold the meat of the slaughtered animal. The ten applicants were therefore, prosecuted under Section 299 of the U. P. Municipalities Act for a breach of the bye-law.

3. The trial of the ten accused was split up In seven separate cases. All the ten accused pleaded not guilty. They denied having slaughtered any animal or having sold its meat within the limits of the Town Area. It was also urged for the accused that the bye-law in question was void and illegal. The learned Magistrate convicted all the ten accused under Section 299 of the U. P. Municipalities Act. Each accused was fined Rs. 50/-.

4. Seven revision applications on behalf of the ten convicted persons were filed before the learned Scissions Judge of Meerut. These revisions were disposed of by the learned Civil and Sessions Judge of Meerut. He agreed with the applicants that the bye-law was invalid in so far as slaughter of cattle used far human food was prohibited. But it was held that the bye-law was Valid as regards the sale of meat. In the result the seven revision applications were dismissed. These ten persons have, therefore, come to this Court in revision.

5. For purposes of these revisions, it may be assumed that the ten applicants slaughtered a buffalo and sold its meat as alleged by the Prosecution. Mr. C. S. Saran appearing for the applicants urged that the bye-law in question is invalid for various reasons.

6. A similar bye-law framed by the Municipal Board of Allahabad came up for consideration before a Pull Bench of Allahabad High Court in 'Buddhu v. Allahabad Municipality' : AIR1952 All753 . The Full Bench held by a majority that the bye-law prohibiting the slaughter of bulls, cows etc. was valid. The majority judgment was delivered by Bindbasni Prasad J. Harish Chandra J. agreed with Bindbasni Pra-Sad j. A dissenting judgment was delivered by Raghubar Dayal J.

7. Although there was difference of opinion among the learned Judges, the Full Bench decision is binding upon me. It is, however, to be noted that the bye-law considered in Buddhu's case (A) was framed by a Municipal Board, whereas the bye-law to be considered in the present revision petition was framed by a Town

Area Committee. Powers conferred on Municipal Boards by U, P. Municipalities Act are wider than the powers conferred on Town Area Committees by the U.P.-Town Areas Act. In Buddhu's case (A) it was held by Bindbasni Prasad, J. that under the general power given by sub-s, (1) of Section 208 read with Section 8 of the U. P. Municipalities Act and Articles 47 and 48 of the Constitution, the Board was competent to make the impugned bye-law. Now, the directive principles contained in Arts, 47 and 48' of the Constitution are binding on Town Areas Committees as well as Municipal Boards. It is, however, to be noted that the impugned bye-law involved in the present cases was framed before the Constitution came into force.

Section 8 of the U. P. Municipalities Act deals with discretionary functions of the Boards. The U. P. Town Areas Act does not contain any provision corresponding to S, 8 of the U. P. Municipalities Act. Certain sections of the TJ. P. Municipalities Act have been applied in a modified form to Town Areas. Sub-section (1) of Section 298, U. P. Municipalities Act is among such sections. However, Section 293(1), U.P. Municipalities Act was made applicable to Town Areas by a Government Notification dated 19-10-1949. The impugned bye-law was prepared in the year 1943. At that time Section 398 Q) TJ. P. Municipalities Act did not apply to Town Areas. So the State cannot derive assistance from Section 8 or Section 298 (1), U. P. Municipalities Act for supporting the validity of the bye-law in the present cases.

8. There are on the file two copies of the resolution dated 23-3-1948. One copy is in Hindi, while the other copy is in Urdu, Section 298 (2) F is noted in the heading of the Hindi copy. But that section is not quoted in the Urdu copy. It appears that Section 298 (2) F was not made applicable to Town Areas at least up to the year 1951.

9. The resolution dated 23-3-1948 may be translated in English thus:

There is at present no slaughter-house of any kind (Kalan or Khurd) in the Town. As the Town is inhabited mostly by Hindus, such as Vaish Jaini, Vaish Agrawal and Brahmans and others, it was unanimously resolved that within the limits of the Town Area the following cattle shall not be slaughtered at any time on any

occasion at any place:

1. Cow heifer.

2. Bullock, calf or bull.

3. She-buffalo, Katiya or he-buffalo.

4. She-goat, sheep etc.

Any person or persons, or any group of persons, who or which, in contravention of this order, shall slaughter the aforesaid cattle Or sell their meat within the limits of the Town Area, shall be liable to be prosecuted under Section 299 of the Municipalities Act and Under Sections....Indian Penal Code and the Code of Criminal Procedure.

10. The resolution was signed and dated by the Chairman Sri Asha Ram on 8-4-1948. It was approved by the Sub-Divisional Magistrate of Baghpat on 9-4-1948.

11. In the resolution the absence of a slaughter-house was noted. Then it was stated that slaughter of certain animals and the sale of their meat were being prohibited, because the majority of the inhabitants consisted of Hindus of certain castes. It is well known that many Hindus seriously object to the slaughter of cows etc. It appears that it was for that reason the Town Area Committee decided to prohibit the slaughter of certain animals, and the sale of the meat of those animals. Now, local authorities are not competent, to frame bye-laws merely to satisfy the sentiments of certain' people. According to the preamble of the TJ. P. Town Areas Act, 1914 (TJ. P. Act II of 1914), the object of the enactment is to make better provision for the sanitation, lighting and improvement of Town Areas in U, P. The improvement mentioned in the preamble implies physical improvements of Town Areas, and does not refer to sentiments.

12. Mr. C. S. Saran contended that the impugned bye-law places undue restriction on the right of butchers to carry on their trade and business and therefore, the bye-law contravenes Article 19(1)(g) of the Constitution. In view of the Full Bench decision, i hold that the bye-law involved in the present cases does not contravene

Article 19(1)(g) of the Constitution.

13. According to the preamble of the U. P. Town Areas Act, the enactment is for making better provision for the sanitation, lighting and improvement of the Town Areas. In Buddhu's case (A) Bindbasni Prasad J., held that Municipal Board have no power to prohibit the slaughter of animals for the purpose of promotion of public health including the raising of the level of nutrition. The impugned bye-law in the present cases may also be said to have some bearing on the question of sanitation. But it is not enough to show that the bye-law falls within the general scheme of the Act. It has further to be shown, that the Town Area Committee was empowered to frame such a bye-law. We have already seen that in the present cases the prosecution cannot derive any assistance from Section 8 and Section 298 (1) of the IT. P. Municipalities Act.

14. U. P. Town Areas Act, 1914 consists of six Chapters and 43 sections. Chapter I is preliminary. Chapter II deals with Town Areas Committee and servants. Chapter III relates to taxation and Town Firod. Chapter IV gives powers for sanitary and other purposes, Chapter V deals with offences. Chapter VI contains supplemental provisions. It will be seen that Chapter IV alone contains powers for passing orders for sanitary and other purposes Sections 26 to 30 are contained in Chapter IV of the Act. Section 25 deals with sanitation orders. Section 27 provides for sanitation and other orders.

Section 28 deals with the publication of such orders. Section 29 provides for appeals against sanitation orders. Section 30 deals with the naming of streets etc. Sections 26 and 27 are the only provisions to enable Town Area Committees to frame bye-laws dealing with sanitation and connected matters. The resolution in question refers to Section 28 of the Act. It was not suggested for the prosecution that the bye-law in question could be framed under Section 27 of the Act. It will, therefore, be sufficient to discuss the provisions of Section 26 of the Act in detail.

15. Section 26 of the TJ. P. Town Areas Act states:

The Committee may by general or special order in writing provide, and if so advised by the prescribed authority, if none is appointed, the District Magistrate,

shall provide for all or any of the following matters within the town area, namely:

a) the regulation of offensive callings or trades;

b) the disposal of corpses by burning or burial;

c) that repair or removal of dangerous or ruinous buildings;

d) the prohibition of the storage of more than a fixed quantity of petroleum or kerosene in any building;

e) the regulation or prohibition of any description of traffic;

and with the previous sanction of the prescribed authority or if none is appointed, the District Magistrate

f) the regulation of slaughter houses;

g) the prohibition for reasons of public health of the use of any place for the sale of meat In default of a licence granted by the committee or otherwise than in accordance with the conditions of the licence;

h) the fixing of the conditions subject to which, the circumstances in which and the areas of localities in respect of which, licences for the sale of meat may be granted, refused, suspended or withdrawn.

16. Mr. B. N. Katju appearing for the State tried to bring the impugned bye-law under Cls. (a), (f) and (g) of Section 26 cl the Act. These three clauses niay, therefore, be examined one by one-

17. Clause (a) of Section 26 deals With the regulation of offensive callings or trades. For purposes of the present revisions, We may assume that the slaughter of animals and the sale of meat are offensive callings or trades. The Town Area Committee was entitled to regulate such offensive callings and trades. But in the present cases we are not dealing with mere regulation of such callings or trades. The bye-law altogether prohibits the slaughter of animals and the sale of their meat. The question arises whether the power of regulation includes the power of

prohibition.

18. In 'Moti Lai V. Uttar Pradesh Government' : AIR1951 All257 , a Full Bench of Allahabad High Court had to consider the validity' of certain provisions of the Motor Vehicles Act In that connection Malik, C.J. observed thus:

The first is the argument that reasonable restriction cannot mean a total stoppage. I do not think this argument is sound. The words in Article 19 are not 'regulation' but are 'reasonable restriction', and I do not see why if by reason of the nature of the trade carried on, which might be against public morality or if, for any other reason, it is deemed necessary, in the general interest, to stop totally any trade- or business, it cannot be included in the word 'restriction.

The learned Chief Justice quoted the following observations of Lord Porter in the Privy Council case 'Commonwealth of Australia v. Bank of New South Wales', (1949) 2 All ER 755 at P. 772 (O):.their Lordships do not intend to lay down that in no circumstances could the exclusion of competition so as to create a monopoly either in a State Or Commonwealth agency, or in some other body, be justified. Every case must be judged on its own facts and in its own setting of time and circumstances, and it may be that in regard to some economic activities' and at some stage of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner of regulation, and that inter-State trade, commerce and intercourse thus prohibited and thus monopolized remained absolutely free. Nor can one further aspect of prohibition be ignored.

It was urged by the appellants that prohibitory measures must be permissible, for otherwise lunatic, infants and bankrupts could without restraint embark on inter-State and diseased eat-tie or noxious drugs could freely be taken across State frontiers. Their Lordships must, therefore, acid what, but for this argument so strenuously urged, they would have thought it necessary to add, that regulation of trade may clearly take the' form of denying certain activities to persons by age or circumstances unfit to perform them or excluding from passage across the frontier of a State creatures or things calculated to injure its citizens. Here, again a question of fact and degree is involved.

19. Section 174 of the U. P. District Boards Act empowers District Board to' make bye-laws regulating markets etc. The District Board of Muzaffarnagar framed a bye-law to the effect that no person shall establish or maintain or run any cattle market in the district within its jurisdiction. In 'Tahiir Husain v. District, Muzaffarnagar' : AIR 1954 SC630 , their Lordships of the Supreme Court held that the bye-law is invalid. The bye-law is not one passed for regulating the market but for prohibiting the petitioner from holding it. Such a bye-law is beyond, jurisdiction.

20. The validity of certain provisions of the Motor Vehicles Act came up for consideration before their Lordships of the Supreme Court in 'Saghir Ahmad v. State of U. P.' : [1955]1SCR707 . In that connection it was observed by his Lordship B. K. Mukherjee, J. at Page 737:

The State has certainly the right to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public.

It was further observed:

Although in our opinion the normal use of the word 'restriction' seems to be in the sense of limitation and not extinction,we would on this occasion prefer not to express any final opinion on this matter.

Upon these authorities, the correct position appears to be this. Under special circumstances prohibition may become necessary for the purpose of regulation or restriction. But generally speaking, the power to regulate or restrict does not include the power to prohibit. The profession of a butcher may be objectionable in certain ways. But it has not been suggested that the profession by itself is illegal or immoral. There is therefore, hardly any necessity to prohibit this profession or trade altogether.

21. Section 26 of U. P. Town Areas Act contains eight clauses. Regulation, is mentioned in cls. (a) and (f). Prohibition is mentioned in Cls. (d) and (g). Clause (e) mentions regulation or prohibition. The language used in the various clauses suggests that the Legislature was aware of the distinction between regulation and prohibition. If regulation includes prohibition, there was no necessity for using the

expression regulation or prohibition in CL (e) of Section 26. Considering the nature or the activity involved and the language employed in S, 26 of the Act, I have come to the conclusion that the term regulation appearing in Clause (a) of Section 26 of the Act does not include prohibition. So the impugned bye-law could not be framed under Clause (a) of Section 26 of the Act.

22. Now we have to consider Cls (f) and (g) of Section 26. Clause (f) deals with the regulation of slaughter houses. In the present case the Town Area Committee found that there was no slaughter house in the Town. In the absence of any slaughter house in the locality, there was hardly any question of regulation of slaughter houses. Further, we have seen that regulation does not Include prohibition.

23. Clause (g) deals with the prohibition for reasons of public health of the use of any place for the sale of meat. The Town Area Committee could frame a bye-law prohibiting the sale of meat under Clause (g) of S, 26. But it is laid down in Section 26 that orders under Cls. (f), (g) and (h) of Section 26 can only be passed with the previous sanction of the prescribed authority oh if none is appointed, the District Magistrate. It appears that there is no prescribed authority as contemplated by Section 26 of the Act. The District Magistrate could delegate his powers to Sub-Divisional Officers under Section 4 of the Act. The learned Sessions Judge has mentioned that on 17-3-1930 the District Magistrate of Meerut delegated his powers to Sub-Divisional Officers. We may, therefore, take it that Sub-Divisional Officers were competent to accord sanction under Section 26 of the Act.

24. It is, however, to be noted that according to Section 26 of the Act orders under Cls. (f), (g) and (h) of S 26 can be passed with the previous sanction of the prescribed authority, the District Magistrate or the Sub-Divisional Magistrate, as the case may be. The hearing of the present revision applications was once adjourned to enable the learned Counsel for the State to find out whether a valid sanction had been obtained in the present case. But it has not been shown that the requisite previous sanction was obtained in the present case. The resolution was passed by the Town Area Committee on 23-3-1948. The resolution was signed by the Chairman on 8-4-1948. The resolution was approved by the Sub-

Divisional Magistrate on 9-4-1948.

It will be seen that the approval was subsequent to the Passing of the resolution and the signature of the Chairman. Such subsequent approval does not amount to previous sanction as required by Section 26 of the Act, Mr. B. N Katju argued that even if previous sanction was not available in the first instance, the bye-law is now valid after the approval of the Sub-Divisional Magistrate. I do not agree. Subsequent approval can. not take the place of previous sanction prescribed by Section 26 of the Act, In the absence of the requisite previous sanction, such a bye-law could not be framed under Cls. (f) and (g) of S 26 of the Act.

25. Mr. B, N. Katju contended that it was not open to the accused persons to question the validity of the bye-law. Reliance was placed upon S, 29 of the U. P. Town Areas Act. Sub-section (1) of Section 29 of the Act states:

An order of the committee under Sections 26 and 27 shall be final when not appealed against and shall not be called in question in any Court.

It was urged that the validity of a bye-law framed under Section 26 of the Act cannot be called in question in any Court.

26. In 'Releigh Investment Co. v. Governor-General in Council' A.I.R. 1947 PC 78 (P), an assessee paid under protest the tax assessed on him. Later he brought a suit for an injunction restraining the income-tax department from making assessments in future and for repayment of the sum assessed. Their Lordships of the Privy Council held that the suit was not maintainable. It observed that under Section 45 of the Income-tax Act there arises a duty to pay the amount of tax demanded on the basis of the assessment. Jurisdiction to question the assessment otherwise than by use of the machinery expressly provided by the Act would appear1 to be inconsistent with the statutory obligation to pay arising by virtue of the assessment.

27. In 'Brijraj Krishna v. S. K. Shaw & Brothers' : [1951]2SCR145 . it was held by their Lordships of the Supreme Court that Bihar Buildings Control Act has entrusted the Controller with a jurisdiction which includes the jurisdictions to

determine whether there is non-pay. ment of rent or not as well as the jurisdiction, on finding that there is non-payment of rent to order eviction of a tenant. So, even if the Controller wrongly decides the question of non-payment Of rent orders eviction of the tenant, his order cannot be questioned in civil Court

28. In 'Briji Rehari Lai v. Emperor' : AIR1943 All123 , the Executive Officer of a Municipal Board served a notice upon the accused to demolish certain constructions. The accused appealed to the Municipal Board, but the appeal was rejected. A subsequent appeal to the District Ma- gistrate was also dismissed. Subsequently the accused was prosecuted under Section 307 of the Municipalities Act for non-compliance with the notice issued under Section 186 of the Act. It was held by a Pull Bench of Allahabad High Court that the criminal Court could go into the legality of the notice under Section 186, and that it was open to the accused to plead that he was not in a position to comply with the notice.

29. In 'District Board Farrukhabad v. Frag Dutt' A.I.R. 1943 All 382 (I), it was held by another Full Bench of Allahabad High Court that if an assessment is made within the framework of the U. P. District Boards Act but the assessment is wrong, it may not be possible for a civil Court to give to the assessee any relief, and his remedy may be confined to an appeal under the Act. If, on the other hand, the assessment is beyond the competence of the Board and is, therefore, an illegal imposition the Civil Court will have jurisdiction to interfere.

30. In the present case the Town Area Committee framed a bye-law which purports to have been made under Section 26 of the U. P. Town Areas Act. If the bye-law was made under E. 26 of the Act, the accused could nut question the propriety of the bye-law. But it is always open to the accused to show that the impugned bye-law was not made under Section 26 of the Act at all. The bar under Section 29 of the Act comes into operation only if an order is passed under Sections 26 and 27 of the Act. If no such order could be validly passed by the Town Area Committee under Sections 26 and 27 of the Act, Section 29 of the Act will have no application. In the present case the applicants have succeeded in showing that the impugned bye-law could not be framed by the Town Area Committee under any of the clauses of Section 26 of the Act. The plea raised by

the applicants is not barred by Section 29 of the Act.

31. We have seen that the impugned bye-law could not be framed by the Town Area Committee under any of the clauses of Section 26 of the IT. P. Town Areas Act. It follows that the bye-law is invalid. The accused persons could not be punished for a breach of the bye-law, which is invalid. The conviction of the applicants must, therefore, be set aside.

32. The seven connected revision applications are allowed. The ten applicants are acquitted of the charge under Section 299 of the U. P, Municipalities Act. If they have already paid their fines, they shall be refunded.

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