

Asa Ram Vs. Emperor

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Court : Allahabad

Decided On : Mar-02-1933

Reported in : AIR1933All593

Appellant : Asa Ram

Respondent : Emperor

Judgement :

Bajpai, J.

1. By this reference the learned Sessions Judge of Fatehpur, recommends that the conviction of the applicant under Section 299(1), Municipalities Act, Local Act 2 'of 1916, be set aside. The recommendation is opposed by the Municipal Board of Fatehpur. The facts are that the applicant is a shop-keeper having his shop within the Municipal limits of Fatehpur, and the charge against him is that he was selling milk and dahi without having obtained previously a licence from the Municipal Board. The bye-law which he is said to have infringed is to the effect that:

no person shall sell or expose for sale milk, cream, rabri, dahi, butter or ghee within the limits of the Municipality unless he has been granted a licence in this behalf on payment of, in advance, of an annual fee of Rs. 2 for such licence whether it is of the whole year or for a part thereof.

2. The Courts below have held that there is sufficient evidence on the record to show that the applicant was selling milk or dahi at his shop within the Municipal limits and it is admitted that he had not taken a licence.

3. It is however contended that the bye-law in question was ultra vires. The Municipal Board purports to have framed the bye-law under a power given to it by Section 298, Clause 2-F(d), Municipalities Act. Under Clause (1) of that section a Board can make bye-laws consistent with the Act, and it is argued that, looking at the scheme of the Act, the legislature intended that the Municipal Board should not levy any licence for the sale of articles like milk and dahi. Under Section 130, Municipalities Act, of 1900, the Board had the power by rules to prohibit the sale of any specified articles of food or drink except in accordance with the conditions of the licence granted by the Board, and it is clear therefore that under the old Act of the Municipal Board could levy licence on articles like milk and dahi. The power to levy a licence was therefore given by the Act itself and not by means of any bye-law framed under the bye-law making power to the Board. Under Section 241 of the present Act, it has been laid down that the right of any person to use any place as a market or shop for the sale of animals, meat or fish intended for human food or as a market for the sale of fruit or vegetables shall be subject to bye-laws made under heading F of Section 298. It would thus appear that the wide powers conferred by Section 130 of the Act of 1900 to control and regulate places for the sale of articles of food and drink have been considerably curtailed in this section and Section 298-F. There is therefore some force in the argument advanced on behalf of the applicant that the bye-law in question is not in keeping with the spirit of the Act. Coming to Section 298 X2)-F-(d), it seems that the Board has the power to provide for the establishment and for the regulation and inspection of markets and slaughter houses, etc., etc., of places for the manufacture, preparation or sale of specified articles of food or drink, and the contention of the Board is that they have framed a bye-law for the levying of the licence for the sale of milk and dahi, etc., under this power.

4. This particular sub-clause does not either speak of prohibition or of levying of a licence. The power to make rules regarding prohibition and the granting of licences is contained in Section 298(2)-F-(b), and that is confined to the sale of animals

intended for human food, meat, fish, fruit and vegetables. It would be doing violence to the language to hold that when a Board has the power to make a bye-law the establishment and for regulation and inspection of places for the sale of specified articles of food or drink, the Board has the power to make a bye-law for the levying of licence on specified articles of food or drink, They can provide for the establishment, for the regulation and for the inspection of places for the manufacture or sale of specified articles of food, but they cannot under the dubious expression 'regulate places' charge a fee for licence:

A statutory power conferred upon a Municipal Council to make bye-laws for regulating and governing a trade does not, in the absence of an express power of prohibition, authorise the making it unlawful to carry on a lawful trade in a lawful manner.

5. This was held by their Lordships of the Privy Council in *Municipal Corporation of the City of Toronto v. Virgo* (1896) AC 88. The Board has the power under Section 294, Municipalities Act, to charge a fee to be fixed by a bye-law for any licence, sanction or permission which it is entitled or required to grant by or under this Act but as I have indicated above the change in the present enactment shows that they are empowered to require licences to be taken out only for markets used for the sale of animals, meat, fish, fruit or vegetables, and that as regards shops the Boards are empowered to require licences to be taken out only in the case of shops used for the sale of animals, meat, or fish. They are not empowered to demand a licence in the case of a shop used for the sale of milk, dahi, cream, etc., I therefore accept the recommendation of the learned Sessions Judge, set aside the conviction of the applicant and direct that the fine, if paid, be refunded.