

Baswa Vs. Emperor

Baswa Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/478376

Court : Allahabad

Decided On : Dec-05-1934

Reported in : AIR1935All216

Appellant : Baswa

Respondent : Emperor

Judgement :

ORDER

Bennet, J.

1. This is an application in criminal revision on behalf of one Baswa a sweeper in the employment of the Municipal Board of Atrauli in Aligarh. District who has been convicted of an. offence under Section 85, U.P. Municipalities Act (2 of 1916). The accused gave a notice to the Municipal Board saying:

I would strike work from 6th August 1934 if certain of my grievances were not redressed by 30th July 1934.

2. The notice is dated 6th July 1934. The case for the prosecution was that the Board considered the matter at a meeting and stated that the grievances of the sweepers would be considered if they withdrew their notice by 8 a.m., on 3rd August 1934, that the Board after that date began to enlist new sweepers and when the sweepers who had given notices discovered this, they made an

application Ex. 2 to the Secretary of the Board in the presence of the Chairman withdrawing their notices. The accused was one of the persons making the application Ex. 2. The recruitment of new sweepers was stopped and the old sweepers were allowed to resume their work which they did. Certain sweepers, including the applicant did stop their work on the 6th August, without giving any further notice and they were prosecuted accordingly. The accused alleged that he did not intend to withdraw his notice and that he put his thumb impression on the blank paper Ex. 2 under the impression that it was his resignation in accordance with the orders of the Board. The lower Courts have not accepted this explanation of the accused. The learned Sessions Judge says:

After the withdrawal of their formal notices if the appellants felt dissatisfied and wished to stop their work they should have given a fresh notice and should not have stopped work without it. Appellants' stopping work after the application Ex. 2 without fresh notice makes them liable under Section 85, Municipalities Act.

3. In other words the Courts below have considered that the sweepers have a right to strike if they give notice I do not agree with that view of the provisions of Section 85, Municipalities Act. Learned Counsel agrees that Sub-section (1)(a) does not apply because that subsection refers to resigning or abandoning employment. The accused here stated that his intention was to strike work and this implies that he did not intend to permanently resign or abandon his employment. Learned Counsel states that his intention was to come under Section 85, Sub-section (1)(b). This provides that a sweeper employed by a Board who without a reasonable cause of which notice has when possible been given to the Board absents himself from his duty shall be liable upon conviction to imprisonment which may extend to two months. Now, there are two elements in this sub-section, one being a reasonable cause and the other being notice where possible. The Courts below have concentrated on the element of notice where possible. I do not think that this is the most important provision of the sub-section. I consider that the provision in regard to reasonable cause is more important as the sub-section states that the reasonable cause must always be present. The provision is intended to have a certain effect and it is intended to prevent some action on the part of sweepers. Why is it that sweepers are singled out for this particular

provision Sub-section (2) shows that the provisions of Sub-section (1) may also be applied by the Commissioner to:

any other specified class of servants employed by a board whose functions intimately concern the public health or safety.

4. This indicates the reason why sweepers are subject to these special provisions that it is because their functions intimately concern the public health or safety. Now, it is clear that the cessation of work by a single sweeper of a Municipal Board would not have much effect on the public health or safety, as there would be no difficulty in getting some other sweeper to do his work for a temporary period. Obviously what the sub-section is intended to prevent is cessation of work by a large number of sweepers or in other words a strike. Sweepers are in a position to enforce their demands by a strike, as this would render matters very difficult for a Municipal Board, as owing to the strike the conservancy system would fail. I consider that the sub-section is specially intended to prevent a strike and I consider that the sub-section intends to lay down that a strike would not be a reasonable cause. By a reasonable cause I understand the subsection would include illness or festivities, such as marriage in the family of a sweeper. On this view I hold that the accused acted without reasonable cause and therefore his plea that he had not withdrawn his notice would be of no avail. The accused therefore was rightly convicted by the lower Courts under Section 85, U.P. Municipalities Act. The sentence of two months imprisonment under the circumstances of the case by the Magistrate or one month by the Sessions Court appears to me to be excessive and I should have considered that the present case would have been met sufficiently by fine, but I understand that the sentence has now been carried out and to inflict a fine would be to enhance it, I accordingly dismiss this application in criminal revision.