

In Re: V. Sesa Prabhu

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Court : Chennai

Decided On : Dec-15-1921

Reported in : 66Ind.Cas.429; (1922)42MLJ149

Appellant : In Re: V. Sesa Prabhu

Judgement :

ORDER

Oldfield, J.

1. We are asked to revise petitioner's conviction and sentence for the offence of storing and selling grain wholesale within the Cannanore Municipal limits without a license from the Municipal Chairman punishable under Sections 249, and 338(b) of the Madras District Municipalities Act V of 1920.

2. The first objection taken to the conviction is that there is no evidence of the sale of grain wholesale or of the storage for wholsale trade, contemplated by Sch, V. (c) for which a license can be required under Section 249. In the absence of a definition of 'Wholesale' in the Act, the meaning of that expression in common parlance must be decisive and, whether the definition in the Century or Webster's Dictionaries as 'sale in large quantities' or the secondary definition in the latter as 'Selling to retailers or jobbers' is accepted, the Sub-Divisional Magistrate's finding of fact is sufficient, that petitioner' has six shops, in which he stores thousands of bags of grain selling them from one to six bags at a time to petty merchants and

others and not, so far as was shown, selling them by measures after breaking up the bags.'

3. This failing, we have to deal with the more substantial contention that such storage without a license was not punishable under Section 338(b) because there had not been any valid notification under Section 249, making it obligatory on petitioner to obtain one. The facts are that under Section 365, Act V of 1920, the Notification of the Governor in Council No. 595, dated 10th August 1920, came into force on 1st October, 1920; but Ex.D the notification under S.249 relied on by the prosecution had been published on 15th July 1920; and it is argued that, the new Act in the had been made to the Municipal Council having at the latter date no powers under the Act, its notification could have no legal effect and could create no obligation, for breach of which petitioner could be punished. The lower Court's answer that petitioner was in no way prejudiced by such premature publication is clearly inconclusive, when the question arises in connection with the application of a penal provision and a strict construction of the law is required. Here reliance is placed firstly on Section 366(a) of the Act of 1920 which provides that until the Chairman and Councillors to be newly appointed or elected under that act come into office the Chairman and councillors under the previous Act of 1884 shall have all the powers of the Chairman and councillors under the former. Section 366(a) however, as its wording and the substantive part of the section show, merely provides for modification in the provisions of the new Act in their application to the term of the office and election and appointment of the councillors and Chairman for the first time after its commencement and does not advance the commencement of the Act or of powers under it before the date to be notified under Section 355. In the alternative reference had been made to the proviso to the last mentioned section under which rules, bye-laws and regulations authorised under the new Act could be made at any time after the publication of the assent to it of the Governor-General on 15th June 1920. But this did not justify the issue of Ex, D on 29th June 1920, For Ex, D is not a rule, because under Section 303(1) rules can be made only by the Governor in Council; it is not a bye-law, because, if its subject matter can be identified with any of those enumerated in Section 3 06, it was not published or confirmed in the manner prescribed in Sections 309, 310; and it is not a regulation, because Section 312 providing only for the manner in

which regulations may be published, power to make them is conferred on the Municipal Council, not generally, but only in connection with certain specified provisions, see for instance, Sections 25 and 130 in which Section 249(1) is not included.

4. In these circumstances it is not possible to uphold as valid the council's Notification, Ex. D. which petitioner is charged with infringing. The foundation for this conviction thus failing, his petition must be allowed and he must be acquitted. The fine, if paid, including the amount levied as license fee will be refunded on his application.

Krishnan, J.

5. This case raises the question of the validity of a notification issued by the Municipal Council of Cannanore in July 1920 under Section 249 of the New District Municipalities Act, Madras Act V of 1920. The notification is marked Ex. D and was issued in accordance with a resolution passed by the Council constituted under the new Repealed Act of 1884 bringing into application the licensing powers given by the new Act with effect from 1st of October 1920 the date on which the Act was brought into force by the Governor in Council by notification in the Fort Saint George Gazette of the 10th August 1920, as provided in Section 365 of the Act. The accused has been prosecuted and convicted under Section 338 for selling grain wholesale and for storing it for such sale without taking out licenses as required by the notification. It is contended for the accused that the notification had no legal effect as it was issued by a Council which was not constituted under the new Act but by one constituted under the repealed Act, and which had no power to pass the resolution to levy licensing fees or to publish a notification to that effect.

6. Without a valid and proper notification under Section 249 the liability to take out licenses for any of the purposes specified in Sch- V of the New Act will not of course arise in any Municipal area for the Act makes the publication of the notification in the manner provided for in the section and the lapse of 60 days thereafter, necessary pre-requisites for bringing into force the licensing provisions. It is therefore important to consider whether Ex-D was a valid notification.

7. Reading Section 249 by itself it is manifest that the Council referred to in it is the Council constituted under the new Act according to the provision of Chapter II thereof. That council is the body given authority by S- 249 of the Act to decide how far it would bring into force the licensing powers given by the Act. The Council constituted under the old Act, was a different body altogether, a different legal entity and could not exercise the power under Section 249 unless indeed there is any other provision of law giving the council the power to so act. It is contended by the learned Public Prosecutor that Section 366 of the Act is such a provision and in fact he relied chiefly on the last part of clause (a) in it as giving power to the old Council to issue the notification in question. That clause gives power to the Governor in council to determine after the new Act had been brought into force, the date on which the Chairman and councillors of the old Council should go out of office and the newly elected Chairman and councillors should come into office; and then it says that until they so come into office, the Chairman and the Councilors of the old Council should have all the powers and be subject to all the duties respectively of the Chairman and councillors under the new Act. It is contended that this last provision validated the notification Ex-D. But unfortunately in this case the council had acted before the New Act was brought into force, their resolution and notification being in July as already stated, that is, some 1 months before the Act was put in force. No doubt the power to issue a notification under Section 249 is a power given to the new council under the new Act but the power itself came into existence only when the Act was brought into force and not before. It is impossible to see, how then, the old council could have properly exercised that power which did not exist on the date on which it purported to exercise it. It is evident from the language of clause (a) that by it the legislature was making provision for carrying on the Municipal administration during the interregnum between the coming into force of the New Act and the assumption of office by the New Chairman and Councillors. The clause, as I understand it, has nothing to do with any anterior period, for before the New Act came into force there was the old act in full force under which the old council was free to act.

8. The only provision of the New Act that gave power to the old council to act in anticipation of the Act being brought into force is the proviso to Section 365 which enabled 'rules, bye-laws and regulations' to be made under the New Act as soon

as it had received the assent of the Governor General. The notification Ex-D was no doubt issued after the assent of the Governor General had been given and if Section 365 could be held to apply to it, it would be a valid proceeding. Apparently the council acted under that section and in fact the appellate Court has upheld its validity under that section. But I am unable to support that view as the notification in question cannot apparently be brought under any one of the terms, 'rule, bye-law or regulation' used in the section. These words are not defined in the Act but Chapter XIV dealing with the making of them shows what is meant by each. Section 303 to 305 show that rules are those made by the Governor-in-Council. Section 306 shows bye-laws are made by the council but that section specified the purposes for which bye-laws can be made, of which the purpose of the notification in question here does not seem to be one. The matter is made clear by referring to Section 309 which prevents a bye-law from having effect till it is approved of and confirmed by the Governor-in-Council, and Section 310 which shows the method of making it and publishing it. These conditions do not apply to the action of the Council under Section 249, Section 312 shows regulations are those made by Municipal authorities and not by the Council and they can be published in such manner as the Council determines. The method of their publication shows clearly that the word regulation cannot refer to the notification under Section 249 which the section itself directs to be published in a particular manner. I am therefore of opinion that Section 365 cannot be used to validate the action of the council in the issuing of the notification Ex-D,

9. It was suggested that if the liability to take out license is not treated as one imposed by any rule, bye-law or regulation there may be a difficulty in applying Section 338 even to cases where proper notification had been issued under Section 249 and that there will be no provision for punishment for disobedience. This argument is, I think, not sound for I consider that the necessity to take out license when a proper notification is issued arises under the Act itself and Section 338 which speaks of the Act as well will apply. In my view the Act imposes the liability subject to the condition about the notification prescribed in Section 249. But when that condition is not properly fulfilled, as I hold is the case here, Section 338 does not apply and the conviction of the accused must be set aside.

10. It was also argued for the petitioner that the trade carried on by him in grain was not a wholesale trade but a retail one. On this point, I agree with the lower court that the trade was a wholesale one as the petitioner is found to have sold grain by the bulk without breaking the bags, in quantities of 1 to 6 bags at a time to retail dealers. The term wholeasle as used in Schedule V of the Act is not defined in the Act and we have therefore to apply to the word the meaning that is ordinarily given to it by the public and by the traders in general. That is the view taken by the lower court and I agree with it and taking that view the petitioner's trade was well within the scope of the term 'wholesale' trade. Though the petitioner fails on this point he has succeeded on his first point and his conviction is therefore quashed and the fine and license fees if they have been paid by him will be refunded to him.

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