

Abdul Rauf Vs. the State

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Court : Kolkata

Decided On : Jul-21-1959

Reported in : AIR1960Cal436,1960CriLJ900

Judge : N.K. Sen and ;D.N. Das Gupta, JJ.

Acts : [Constitution of India](#) - Article 245; ;[Code of Criminal Procedure \(CrPC\)](#) , [1898](#) - Section 439; ;[Bengal Municipal Act, 1932](#) - Sections 245 and 503

Appeal No. : Criminal Revn. No. 81 of 1958

Appellant : Abdul Rauf

Respondent : The State

Advocate for Def. : A.C. Roy and ;Kishore Mukherjee, Adv.

Advocate for Pet/Ap. : Balai Chandra Roy, Adv.

Judgement :

D.N. Das Gupta, J.

1. This is a revisional application for setting aside the conviction and sentence of the petitioner under by-law No. 25 of the by-laws made under Section 245 of the [Bengal Municipal Act, 1932](#), (Bengal Act XV of 1932). The case for the prosecution is that the petitioner who owns a house by the side of a public lane

within the Municipality of Asansol constructed a wall on the said lane by encroaching upon it. He did not remove the wall in spite of the requisition of the Chairman on behalf of the Commissioners of the Municipality made under the provision of Section 240(l)(b) of the said Act.

2. The petitioner denied that he had made any encroachment.

3. The petitioner was found not guilty of the offence under Section 240(1)(b)/500 of the Act and acquitted by the learned Magistrate who tried him. But the petitioner was found guilty under by-law No. 25, convicted and sentenced to pay a fine of Rs. 10/- in default to undergo simple imprisonment for two days.

4. Section 245 of the Bengal Municipal Act provides:

'The Commissioners at a meeting may make by-laws -

(a) to regulate or prohibit any description of. traffic on public street or on approaches to ghats or public ferries and to prevent obstructions, encroachments or excavations on or near such streets, ghats or ferries :

* * * *

Section 503 of the Act provides:

'In making any rule or by-law the Commissioners may with the sanction of the State Government, or in the case of any rule, model rule or by-law the State Government may direct that the breach thereof shall be punishable with a fine which may extend to fifty rupees and, when the breach is a continuing one, with a further fine not exceeding five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence'.

By notification No. 7501 M. dated 24-9-1936, published in the Calcutta Gazette dated 1-10-1936, the draft of by-laws, which had been framed by the Commissioners of the Asansol Municipality under Section 245(a) and (b) of the [Bengal Municipal Act, 1932](#). and which the Government of Bengal (Ministry of Local-Self Government) proposed to confirm under Section 506 of the Act was published. By-law 23 runs as follows:

'Excavations and enclosures. No person shall, without the general or special permission of the Commissioners, make any excavation on any public street or on and near any ghat or public ferry or enclose any such street or any part thereof.'

Ground No. IX in the revisional application is:

'By laws made under Section 245 of the [Bengal Municipal Act, 1932](#). so far as these provide for penalties and create offences are illegal and ultra-vires the Constitution'.

5. Mr. Roy appearing for the petitioner has put forward a two-Fold argument on behalf of his client. He has contended in the 1st place that the legislature has not formulated a legislative policy according to which offences are to be created, that the delegation of power to create offences amounts to a surrender by the legislature of its essential legislative powers and that offences can be created not by any delegated authority but only by the Legislature itself. Mr. Roy's second contention is that even if there could be a successful delegation of such power, there has been no proper delegation by Section 503 of the Bengal Municipal Act, because two authorities, namely, the State Government and the Commissioners have been given undefined interdependent powers,

6. Mr. Roy has referred to 'In re, Art. 143, [Constitution of India](#) and Delhi Laws Act, 1912' Etc; (1951) SCR 747: (AIR 1951 SC 332 and Edward Mills Co. Ltd.. Beawar v. State of Aimer, : (1954) IILLJ686SC .

7. The learned Deputy Legal Remembrancer contends that the Legislature has not delegated its essential legislative functions and that the Legislature has clearly defined the policy and made its intention clear. He has referred to the decisions reported in Subodh Kumar Bose v. Commissioners of Krishnagar Municipality, : AIR1956 Cal393 ; Bhatnagars and Co. Ltd. v. S. Venkataraman, (S) : 1983ECR1607D(SC) ; Surya v. State of Raiasthan, (S) : [1957]1SCR605 ; Ramananda Agarwalla v. The State, : AIR1951 Cal120 and Gopal Chandra Mukherjee v. B.C. Das Gupta, 93 Cal LJ 304.

8. I have considered the decisions referred to by Mr. Roy and the learned Deputy Legal Remembrancer. In my opinion there has been no delegation of essential legislative functions. The Bengal Municipal Act has laid down a well-defined policy. The object of the Act is to ensure efficient municipal administration which includes regulation of traffic on public roads. Section 243 gives powers to the Commissioners to make by-laws for such regulation. It is not possible for the Legislature to provide specifically for all cases and therefore it provides in general terms for contingencies likely to arise in future in the administration of the law. In *Hodge v. Queen*, their Lordships of the Judicial Committee observed as follows:

'It was argued at the bar that the Legislature committing important regulations to agents or delegates effaces itself. That is not so. It retains its power intact and can, whenever it pleases, destroy the agency it has created and set up another, or take the matter directly into its own hands. How far it shall seek the aid of subordinate agencies and how long it shall continue them, are matters for such Legislature and not for Courts of Law to decide'. (1883-9 A. C. 117).

9. The Privy Council upheld in the case of 1883-9 AC 117 the validity of an Act by which power was given by a Provincial] Legislature in Canada to a Board of Commissioners to make bylaws or municipal regulations for the good Government of a town and thereby to create offences and annex penalties thereto. It seems that even apart from Section 503 which confers express power to punish breaches of by-laws the power given by Section 245 carries with it a power to make breaches of bylaws punishable. It is one of the canons of Interpretation of statutes that an Act which authorises the making of by-laws, impliedly authorises the annexation of reasonable pecuniary penalty for their infringement, recoverable (in the absence of other provision) by action or distress. (Maxwell on the Interpretation of Statutes, 10th Edn. page 362. For the reasons given above the by-laws in question in the present case are not ultra vires and illegal as contended by Mr. Roy, learned Advocate for the petitioner.

10. Mr. Roy's second contention is that there has been no proper delegation under Section 503, because two authorities, State Government and the Commissioners, Have been given undefined interdependent powers. A reference to Section 503

would show that the direction of the Commissioners of the Municipality with the sanction of the State Government as to how a breach of the bye-law shall be punishable has been strictly defined. There is therefore no substance in this contention.

11. It is next contended on behalf of the petitioner that the prosecution has failed to prove the alleged encroachment, although this ground has not been specifically taken in the revisional petition. I have considered the evidence of the Supervisor of the Municipality, the only witness to prove the alleged encroachment. He surveyed on reference to the C. S. map and prepared a sketch map showing the encroachment in red colour. It is true that he did not prepare any field book nor did he show the measurement of the actual area encroached upon. But he took a fixed starting point and has clearly shown in the sketch map the encroached area in red colour which is quite considerable. The suggestion thrown to the witness in cross-examination was that the petitioner did not construct the wall in question. The evidence of the supervisor is that he saw the petitioner construct the wall which measured '35 ft. in length and 6' to 9' in height.' The evidence is satisfactory to prove the encroachment. The learned Magistrate has carefully considered the evidence and there are no grounds for interfering.

12. Another point taken by the learned Advocate for the petitioner relates to the number of the by-law under which the petitioner has been convicted. In the model by-laws contained in Circular Nos: 1688-1692 M.. dated 19-4-1934, the number is 25 but in the draft of the by-laws which was published by Notification No. 7501 M., dated 24-9-1936, the corresponding number of the bylaw is 23 which has been reproduced above. There is no difference in the language. The petitioner was convicted under by-law 25. The correct number of the by-law should have been 23. But due notice was given to the petitioner about the encroachment before the prosecution was started. The petitioner had proper notice of the encroachment he was asked to remove. Under Section 242 of the Code of Criminal Procedure the accusation was explained to the petitioner and he pleaded not guilty.

Evidence was led about the encroachment and the petitioner was examined under Section 342 of the Code of Criminal Procedure. In the circumstances no prejudice

will be caused to the petitioner if the number of the by-law under which the petitioner has been convicted is corrected and altered to 23. With this modification the petition is dismissed and the Rule is discharged.

N.K. Sen, J.

13. I agree.

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