

# ALLAHABAD HIGH COURT

Municipal Board Hathras

Vs

Bohrey Narain Dutt

(Verma, J.)

16.08.1946

## JUDGMENT

**Verma, J.**

1. The appellant, the Municipal Board of Hathras, was the defendant in the suit which has been decreed by the Courts below.

2. It appears that there are several flour mills within the municipal limits of the town of Hathras. The plaintiffs-respondents, Bohrey Narain Dutt and Pandit Vishwanath Prasad, are the owners, either jointly of one such mill or separately of two such mills. They brought the suit in a representative capacity for the benefit of the owners of all the flour mills, and prayed for the following reliefs:

(a) It may be declared that the by-laws promulgated by the Municipal Board in respect of flour mills and also the notice issued by the defendant are illegal, unreasonable and ultra vires and are not binding.

(b) A perpetual injunction may be issued to the defendant restraining it from enforcing the by-laws.

(c) The defendant be ordered to pay the costs of the suit.

3. The material facts, about which there is no controversy, are as follows. The Provincial Government, being of the opinion that it was desirable to have in all municipalities a uniform set of by-laws for the regulation and control of flour mills, framed, in January 1942, certain model by-laws and sent them to all Commissioners with the request that they might be circulated to all the Municipal Boards in their Divisions "for their guidance and adoption, wherever necessary." The Commissioner of the Division concerned sent a copy of these model by-laws to the Municipal Board, Hathras, with the necessary direction and the Board took the said by-laws into consideration at its meeting held on 25-2-1942, and called for a report from the Medical Officer of Health. The Medical Officer of Health by his report recommended that these by-laws should be adopted. The Board, at its meeting held on 24-3-1942, took the model by-laws and the recommendation of the Medical Officer of Health into consideration and by Special Resolution

Order 25 passed at that meeting approved the model by-laws. By notices dated 16-4-1942, the Municipal Board informed the public of Hathras that the Board had approved the model by-laws framed by Government and called upon the public to submit objections or propose amendments, if any, within fifteen days. These notices were exhibited at various places in the town and their contents were also broadcast by beat of drum. Translations of the model by-laws in Hindi as well as Urdu were posted upon the notice board at the municipal office. Thus the Board not only complied with the provisions of Section 304, U.P. Municipalities Act (2 of 1916) but did more than what that section requires. There can, therefore, be no question as to the due publication of the notice. It is common ground that no one ever objected or proposed any amendments to the said by-laws. The Board, accordingly, at its meeting held on 19-5-1942, finally approved the said by-laws and submitted them to the Commissioner of the Division for sanction as required by Municipalities Act. The Commissioner sanctioned the by-laws by an order dated 23-10-1942, and the by-laws were then published in the U.P. Government Gazette dated 31-10-1942. Thus, under Section 301(2) of the Act, the by-laws became effective as from 31-10-1942. It may be mentioned here that the by-laws were stated to have been framed under Section 298(2), List I.F. (d) of the Act.

4. The owners of the flour mills established prior to the publication of these bylaws or some of them did not comply with the provisions thereof. The Board, thereupon, on 18-3-1943, issued notices to the owners and managers of such mills and called upon them to obtain licenses in accordance with the by-laws within three days of the service of the notice. The notices were served on the same date, viz. 18-3-1943. The present suit was filed on 27-3-1943.

5. It will be convenient at this stage to state the provisions contained in the various sections of the by-laws in question. The first section defines "flour mills." The second section lays-down that no person shall establish or maintain a flour mill within the limits of the municipality unless he has been granted a license in. this behalf or otherwise than in accordance with the conditions of the license so granted. By the third section the Executive Officer of the Board is appointed the licensing officer for the purposes of the by-laws in question and by the fourth section a fee of Rs. 5 is prescribed for every license granted under the by-laws. The fifth section lays down that every license shall be valid up to 31st March next and the application for the renewal of the license must be made at least a fortnight before the expiration of the existing license. By the sixth section authority is conferred on the licensing officer to suspend or cancel a license if the licensee breaks any of the conditions imposed under the by-laws and gives a right of appeal from such. order to the Board within fifteen days from the date of receipt of the order by the licensee. The seventh section is as follows:

All licenses granted under these by-laws shall be subject to the conditions laid down below:

(a) The premises in which the mill is situated shall be pakka in construction and strong enough to stand the forces of vibration of the mechanical power used to work the machinery for milling grain and shall not adjoin any premises used for residential purposes at the time the mill is first established except in cases where the owner of the mill himself resides in the adjoining premises

or a written permission of both the owner and occupier of the said premises has been previously obtained and filed in the municipality, or the premises in which the mill is established is intercepted by a public lane or street at least 8 feet wide from, the neighbouring buildings.

(b) No chhappars shall be allowed to be thatched within the premises.

(c) No mill shall be situated within 100 feet of a public latrine or public urinal or reservoir of stagnant water, or any offensive trade from which dust or obnoxious vapour or dangerous gases may arise.

(d) There shall be no privy on the premises, unless it is separated from the mill by an open passage 10 feet wide and open to the sky or by a substantial wall. The privy shall have no direct communications with the mill.

(e) All drains, pipes or sewers for carrying of sullage or sewerage, shall be constructed of circular glazed S.W. pipes or cast iron pipes.

(f) A separate receptacle shall be provided for the reception of all foul matters and the content thereof shall be removed daily from the premises.

(g) Every room in the premises shall have a window or windows for the passage of light and air equal to at least 1/10th of the floor area of such room. Each window shall be capable of being opened and shall be covered by wire gauze of such a mesh as will keep out flies. The premises shall have doors partly of wood and partly of wire gauze netting of a mesh similar to that covering the window.

(h) The premises shall be kept clean and in good order, well lighted, ventilated and drained.

(i) The building shall be kept in proper repair and the machinery, if any, shall be protected and fenced.

(j) The owner or the manager of the mill shall comply with any order, which the Chairman, or the Licensing Officer, may issue to him regarding the sanitary measures to be adopted for securing the proper cleansing of the mill premises.

(k) The premises shall be open to inspection by the Licensing Officer or Inspecting Officers empowered in this behalf by the Board who shall be at liberty to remove for examination specimens and samples of grains or flour for sale and the owner or the manager of the mill shall comply within a reasonable period with any order which the Licensing Officer or the Inspecting Officers of the Board may pass either sua motu or on the report of a Sanitary Inspector with respect to such premises.

(l) The floor of the premises shall be pakka and the floor and walls up to the height of 6 feet shall be cement plastered and the bins for holding grains -and flour shall be made of stones and bricks rendered in cement or lime or of metal

(m) In the case of a mill worked by a steam engine, the chimney shall be at least 15 feet higher than the highest building within a radius of 100 feet from it.

(n) Subject to the provisions of condition (c) the owner shall provide a sufficient number of latrines and urinals for mill hands on such a scale as may be laid down by the local authorities provided that it shall not in any case fall short of the following scale as required in the Indian Factories Act:

(1) Three seats for 50 operatives.

(2) Four seats for number exceeding 50 but not exceeding 150.

(3) Five seats for number exceeding 150 but not exceeding 250.

NOTE--Each seat shall be effectively screened from the adjacent ones, and each cubicle or apartment shall be provided with a door or other device to ensure privacy.

(o) The owner or the manager of the mill shall put up a copy of these by-laws and their translations in Hindi and Urdu in a conspicuous place within the premises of the mill.

(p) The owner or the manager of the mill shall not employ any person suffering or suspected to be suffering from any infectious or contagious disease, or allow any person suffering or suspected to be suffering from such a disease if it comes to his knowledge to enter or remain inside the mill.

(q) The weights used shall be of iron and of the standards laid by the Government and used in the markets.

(r) No grain shall be milled unless it has been suitably cleaned and the dust, grit and foreign matter removed, provided that when a customer brings his own grain for milling it may be milled in the condition in which it is brought.

(s) The store room where bags of flour or grain are stored shall be made rat proof and damp proof.

(t) The mill shall be worked only during the day, i.e. from sunrise to sunset. If it is to be run after

sunset the written permission of the Chairman or the Executive Officer shall be previously obtained, but such permission shall be granted in very rare cases and not more than three nights in a month.

(u) Thirty square feet of superficial space and 300 cubic feet of cubic space shall be provided for each person working in the mill.

(v) The mill shall not be used for milling any substance other than articles of food.

(w) The door from the engine room to the milling room shall be sufficiently distant to avoid any chance of contamination of the food by the products of the engine room.

(x) A visitor's gallery shall be provided from where customers can watch their respective quantities of grain being ground in the mill and test the fineness by hand.

(y) No machine worked by engine exceeding 20 horse power shall be installed except in special cases.

The eighth and ninth sections deal with flour mills established prior to the publication of the by-laws in question and are as follows:

8. The owners of flour mills established prior to the publication of these by-laws shall comply with the conditions contained in by-law 7 so far as may appear to the Board to be practicable or necessary. An owner of a mill to which this by-law applies shall, at the time of applying for a license, state to what extent he wishes to be exempted from compliance with the conditions set out in by law 7 and his application shall be laid before the Board for decision with the Licensing Officer's report and a license shall thereafter be issued to him subject to such of the conditions set out in by-law 7 as the Board may determine.

In the event of a dispute arising between the Board and a mill owner on any matter relating to sanitation, the Board shall refer it to the Director of Public Health whose decision shall be final.

9. An appeal shall lie to the Board against any order passed or action taken by the Licensing Officer with respect to such premises, if filed within 10 days from the communication of the order to the millowner or the manager. The Board's decision after considering the opinion of the Director of Public Health obtained on any point of sanitation involved shall be final.

Lastly, we have a paragraph headed : 'penalty' which lays down that, in exercise of the powers conferred by Section 299(1) of the Act, the Board directs that a breach of any of the provisions of the bylaws shall be punishable with a fine which may extend to rupees one hundred and fifty and, in the event of a continuing breach, with a further fine which may extend to rupees five for every

day after the date of first conviction during which the offender is proved to have persisted in the offence.

6. The allegations made in the plaint are that the by-laws in question are "unreasonable, impracticable, illegal and ultra vires" and have been promulgated "against law and in contravention of the powers conferred upon the Board" (para 3); that when the plaintiffs learnt of what the Board had done, they represented to the Board that the by-laws were "improper, unjust and against law" and that, "having regard to the times it would not be possible to obey them" and that thereupon the defendant admitted the correctness of the representation made by the plaintiffs and recommended to the higher authorities to postpone the enforcement of the by-laws but that the defendant has now issued notices requiring millowners and the managers to obtain licenses in accordance with the by-laws (para 4); and that, if the by-laws in question remain in force, great trouble and injury would be caused to the public in general and to the plaintiffs in particular and that therefore the plaintiffs are entitled to the reliefs claimed.

7. It may be stated at once that the allegations made in paragraph 4 of the plaint are of no relevance for, even assuming that the facts stated in that paragraph are correct, they cannot affect the powers conferred upon the Board by the law or the validity of the by-laws, which are the only questions that arise in this case.

8. After the written statement had been filed the Court on 12-3-1943, asked the plaintiffs' counsel to give the reason for the invalidity of the notice issued on 18-3-1943, and the counsel stated that the plaintiffs alleged that notice to be illegal because it allowed only three days' time for obtaining licenses.

9. The learned Munsif framed two issues:

(1) Are the by-laws framed by the Board about flour mills at Hathras illegal, ultra vires and unreasonable and impracticable?

(2) To what reliefs are the plaintiffs entitled?

10. The reasons given by the learned Munsif for deciding the first issue in favour of the plaintiffs are not quite intelligible. He appears to have been of the opinion that the by-laws were harsh, and were calculated to cause great hardship to the millowners and to the public in general, particularly as it would not have been easy in those days for the millowners to obtain the necessary building and other materials which could enable them to comply with the by-laws. "With regard to Section 8 of the by-laws he observed that "some chosen few may be favoured by the Board" and that therefore that section was also unreasonable. The learned Munsif further observed that Hathras was a tahsil town, that the flour mills were installed in small shops and that he had himself seen a number of them. He expressed the opinion that if the by-laws were

enforced and if all the millowners refused to comply with them, they would have to "close this lawful and essential business" and that it would be "very harsh on the public at large." He stated in his judgment that it was difficult to obtain cement and that he (the learned Munsif) had not been able to get even a few bags for himself. He further expressed the opinion that these, by-laws "instead of providing for the convenience of residents of Hathras" would become a "curse" and observed : "if they are enforced I am sure we may not get flour to eat." He relied on the case in Emperor v. Asa Ram 20 A.I.R. 1933 All. 593 and held that the case in Emperor v. Brijmohanal 21 A.I.R. 1934 All. 497 cited by the defendant's counsel, was "beyond the mark". At the end of his judgment the learned Munsif made this observation : "I presume that the procedure needed to frame these by-laws were all carried out, yet they are not enforceable because they are illegal".

11. The learned District Judge dismissed the defendant's appeal practically on the same grounds which had appealed to the learned Munsif though, of course, he expressed himself in better and more intelligible language and did not rely on his personal knowledge and experiences. He expressed the opinion that some of the conditions laid down in Section 7 of the by-laws would be "extremely unreasonable and vexatious." With regard to Section 8 of the by-laws he observed that it was "clearly undesirable that such wide powers should be given to the Board to make discrimination in the case Of individual mills" and that "it would be more just if only such by-laws are made which can reasonably be enforced in the same manner against all persona." The learned Judge further held that the by-laws as a whole were unenforceable as they were ultra vires because, in the learned Judge's opinion Section 298(2), List I.F (d) of the Act did not authorise a Baord to make Such by-laws. He also relied on the case in Emperor v. Asa Ram 20 A.I.R. 1933 All. 593 mentioned above.

12. Having heard learned Counsel for the parties and having carefully considered the matter, we have come to the conclusion that the decree granted by the Courts below to the plaintiffs cannot be sustained.

13. We shall first deal with the finding of the learned District Judge that the Board had no power under the Municipalities Act to frame these by-laws. Section 298, Municipalities Act, lays down the powers of the Board with regard to the making of by-laws. Sub-section (1) of that section is as follows:

The Board by special resolution may, and where required by the local Government shall, make by-laws, applicable to the whole or any part of the municipality consistent with this Act and with any rule, for the purpose of promoting and maintaining the health, safety, and convenience of the inhabitants of the municipality and for the furtherance of municipal administration under this Act.

It appears to us that the power thus conferred on a Board is wide and comprehensive enough to embrace the making of by-laws of the nature of those with which we are concerned in this case.

We consider it sufficient to observe that the by-laws, which we have already quoted in extenso, including the conditions laid down in Section 7 are obviously designed to promote and maintain the health, safety and convenience of the inhabitants of the municipality. We have carefully examined the conditions set out in Section 7 and have no hesitation in holding that every one of them is necessary for the promotion and maintenance of the health, safety and convenience, not only of the public in general, but also of the owners and managers of, and the workers in, the flour mills.

14. The material portion of Sub-section (2) of Section 298 is as follows:

In particular, and without prejudice to the generality of the power conferred by Sub-section (1), the Board of a municipality, wherever situated, may in the exercise of the said power, make any by-law described in List I below.... List I is divided into several parts, and the contents of each part are set out under different heads. Clause (d) of head F so far as it is material for our present purpose is as follows:

providing for the establishment, and except so far as provision may be made by-laws under Sub-head (c), for the regulation and inspection...of flour mills...and for the proper and cleanly conduct of business therein. Learned Counsel for the appellant has contended that the word "regulation" is comprehensive enough to include the making of by-laws of the nature of the by-laws in question. Learned Counsel for the respondents has contested this argument and has contended that the requirement, that owners of existing flour mills and those who wish to establish new flour mills must obtain a license from the Municipal Board, is particularly objectionable. It appears to us that this argument is based on a misapprehension of the very purpose for, which, Municipal Boards are established. Municipal Boards are bodies that are brought into being by statute with the object of promoting and maintaining the health, safety and convenience of the inhabitants of a particular locality and, in order, to enable the Municipal Board to carry out that purpose, the law confers necessary powers on the Boards. The State has an inherent right to enact laws and to make rules and regulations for the protection of the lives, limbs, health, comfort, safety and convenience of persons and the preservation' and security of property. This power is what is usually known as the "police power" and this power is attributed to all self-governing bodies as indispensable to their healthy existence and to the public welfare. It is also well settled that the usual way of exercising the police power by a municipal corporation is by the issue of a license or permit allowing the carrying on of the particular business or occupation or permitting the thing to be done under the conditions and rules set out in the license. A license is nothing more or less than a permission granted to a particular person to do a particular thing at a particular place in a particular manner. The power to require the obtaining of licenses is, and has to be, incidental to the power of regulation and inspection. It is clear, in our opinion, that, if a Board has not the power to require, and to compel, persons to take out licenses for the doing of certain things which are likely to affect the health, safety and convenience of the public it will be exceedingly difficult, if not impossible, for the Board to arrange for the regulation, control and inspection of those things, although the law casts upon it the duty of regulating, controlling and

inspecting them. It is only when the Board is invested with such a power that it can effectively discharge its duties in such matters.

15. The point appears to us to be elementary and we do not propose to pursue it any further. We are clearly of the opinion that the word "regulation" in Clause (d) quoted above must include the power to make by-laws and to require the taking out of licenses for the establishment or continuance of the things and businesses mentioned in that clause. We would further point out that head G of List I of Sub-section (2) of Section 298 deals with "Offensive Trades" and, among other things, it is laid down there that the Board has the power to make by-laws prohibiting the use of any place, in default of a license granted by the Board or otherwise than in accordance, with the conditions of a license so granted, as a factory or other place of business for.' any purpose if such use is likely to cause a public nuisance or involve risk of fire--Clause (a) Sub-clause (XIII)--and providing for the inspection and regulation of the conduct of business in a place used as aforesaid, so as to secure cleanliness therein or to minimise any injurious, offensive or dangerous effect arising or likely to arise therefrom--Clause (c). It appears to us that a Board--apart from head F, Clause (d)--has the power under the provisions laid down under, head G also to make by-laws of the nature of those in question. It is, again, obvious that flour mills do come within the description "Offensive Trades." If they are not properly regulated, they can become a serious menace to the health, safety and convenience of the inhabitants of the locality. Lastly, we may repeat that a Sub-section (1) of Section 298 is comprehensive enough to empower the Board to promulgate by-laws of this nature. In fact, it is not only the right but also the duty of a Board to make by-laws of this character in the interest of the public, including the owners of, and workers in, all such mills and factories.

16. We come now to the question whether the by-laws with which we are concerned are of such a character as to justify the Court in declaring them to be illegal and invalid on the ground of unreasonableness. The principles on which the Courts have to decide such a question are well settled. They are summarised in Maxwell's Interpretation of Statutes, Edn. 7 at p. 256. On the one hand a municipal power of regulation or of making by laws for good government, without express words of prohibition does not authorize the making it unlawful to carry on a lawful trade in a lawful manner. Moreover, a power to regulate and govern seems to imply the continued existence of that which is to be regulated and governed. A Municipal Board therefore cannot make a by-law by which a lawful trade which is being carried on in a lawful manner is destroyed. But, on the other hand, there is a well recognised principle that, where there is a competent authority to which an act of legislature entrusts the power of making regulations, it is for that authority to decide what regulations are necessary, and any regulation which they may decide to make should be supported, unless they are manifestly unreasonable or unfair.

Courts of justice are slow to condemn municipal by-laws, as invalid, on the supposed ground of unreasonableness, and support them, if possible, by a benevolent interpretation crediting those who have to administer them with an intention to do so in a reasonable manner and with being

the best Judges whether a particular by-law is required in that district or not. In Halsbury's Laws of England (Hailsham edition), vol. xxvi, at page 606 under para. 1291, the following note appears: *In Kruse v. Johnson*<sup>1</sup> a by-law which prohibited any person from playing music or singing within fifty yards of any dwelling house after being requested by a constable or inmate to desist was held not unreasonable although it was not confined to acts causing an annoyance or nuisance. A distinction was drawn in that case between by-laws made by trading companies and bylaws made, under ample statutory safeguards, by local authorities elected by a popular vote. Bye-laws of public representative bodies 'ought to be supported if possible. They ought to be, as has been said, 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canon of construction.... A bye-law is not unreasonable because particular Judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some Judges may think ought to be there. The quotation is from the judgment of Lord Russell of Killowen C.J., in that case (page 99 of the report). At page 607 certain examples are given and the matter is put thus: The requirement of reasonableness involves the general rule that bye-laws should in their application be general and not particular. They should not improperly discriminate between different classes. There is also at page 607 the following note : "Unreasonableness must be made out with great strength and clearness" and it is based upon an observation of Lord Tomlin in *Baird v. Glasgow Corporation* (1936) 1936 A.C. 32.

17. Reference may EGSO be made to the Full Bench decision of this Court in *Mewa Ram v. Municipal Board, Muttra* 26 A.I.R. 1939 All. 466 and particularly to the judgments of Allsop and Ismail, JJ. It will be sufficient to refer to the following passage in the judgment of Allsop J. at p. 794 of the report: My brother Iqbal Ahmad has quoted the remarks of Lord Russel in *Kruse v. Johnson* (1898) 2 Q.B. 91 and I need not repeat them There can be no doubt that the Courts should be very careful not to arrogate to themselves the right to supervise the activities of public authorities in exercise of the powers conferred upon them, especially when these public authorities are popularly elected and where, as in this case, those powers are subject to the control of the Local Government.

18. Can it reasonably be said that there is anything in the by-laws, which the plaintiffs challenge by the present suit, which can be said to be unreasonable and to require interference on the part of the Courts? In our judgment the answer to this question must be in the negative. The plaintiffs, besides attacking the requirement that no person shall establish or maintain a flour mill within the limits of the municipality of Hathras unless he has been granted a license in this behalf or otherwise than in accordance with the conditions of the license so granted, vehemently attack the conditions laid down in Section 7 of the by-laws. As has already been stated, we have carefully examined the conditions laid down in Section 7. Having done so, we have no hesitation in holding that none of those conditions is unreasonable. A by-law cannot be held to be unreasonable merely because it will cause some trouble to the persons affected thereby or will

necessitate their attending to certain duties. If the Courts were to declare by-laws to be unreasonable on such a ground, it will be impossible to maintain any by-laws at all. Every rule or by-law is bound to be irksome to the person who is required thereby to do something. To mention only a few instances, the Building Regulations, the rules relating to cleanliness and public hygiene, the rules regulating cesspools and drains, etc, all impose certain duties on the citizen and the carrying out of these duties is likely to be found to be irksome by a certain class of people. Take again the case of the rules requiring the registration of motor cars, or their insurance. Our conclusion, therefore, is that the by-laws in question are not unreasonable in the sense in which that word is to be understood by the Courts.

19. The grounds upon which each of the Courts below based its decision, that the suit should be decreed, have been given us in an earlier portion of this judgment. It appears to us that the following observation in the judgment of Allsop J. in *Mewa Ram v. Municipal Board, Muttra*<sup>2</sup> of the Report is applicable to those grounds: here was in the arguments, it seems to me, an underlying suggestion that the Municipal Board had acted in a most tyrannous and improper manner, and it is therefore very necessary to guard against any emotional reactions in considering the questions which are to be answered.

20. We come now to the case in *Emperor v. Asa Ram*<sup>3</sup> on which the Courts below have relied. In that case a Municipal Board had passed a by-law requiring all persons, who wanted to sell or expose for sale milk, dahi, cream, rabri, butter or ghee within the limits of the Municipality, to obtain a license in that behalf on payment in advance of a certain sum of money as annual fee for such license. It was found that Asa Ram had been selling milk and dahi without having previously obtained a license from the Board. He was thereupon prosecuted under Section 299(1), Municipalities Act, 1916, and was convicted by a Magistrate. The Sessions Judge referred the case to the High Court with the recommendation that the conviction of Asa Ram be set aside. The Reference came up for hearing before a learned Single Judge of this Court, and the learned Judge accepted the recommendation of the Sessions Judge and set aside the conviction. He was impressed by the argument that the scope of Section 241, Municipalities Act, 1916, was narrower than that of Section 130 of the Act of 1900 and that therefore the by-law in question in *Emperor v. Asa Ram* 20 A.I.R. 1933 All. 593(Supra) was "not in keeping with the spirit of the Act". With regard to the provision contained in Clause (d) of Heading P of List I, given under Sub-section (2) of Section 298 by which the Boards have been authorized to make any by-law providing for the establishment and for the regulation and inspection, among other things, of places for the manufacture, preparation or sale of specified articles of food or drink the learned Judge expressed the opinion that the Boards could not "Under the dubious expression 'regulate places' charge a fee for license". He relied upon the case in *Municipal Corporation of Toronto v. Virgo*<sup>4</sup> where it had been observed that a statutory power conferred upon a Municipal Council to make by-laws for regulating and governing a trade did not, in the absence of an express power of prohibition, authorize the making it unlawful to carry on a lawful-trade in a lawful manner. In the first place, it is perhaps possible to distinguish *Emperor v. Asa Ram* 20 A.I.R. 1933 All.

593(Supra) from the one before us on the ground that it was concerned with the sale of certain articles of food whereas in the present case the Court has to consider the power of Municipal Boards in the matter of flour mills. In the second place, we find it difficult, With all respect to the learned Judge who decided Emperor v. Asa Ram 20 A.I.R. 1933 All. 593 to agree with the decision that the by-law in question in that case was ultra vires. We have already given OUR reasons for holding that the power to require the obtaining of licenses must be held to be incidental to the power of regulation and inspection We may also, e again with great respect to the learned Judge who decided Emperor v. Asa Ram 20 A.I.R. 1933 All. 593 point out that he apparently overlooked the fact that the by-law, which was in question in Municipal Corporation of Toronto v. Virgo (1896) 1896 A.C. 88 absolutely prohibited the carrying on of certain business in certain streets and portions of streets in the city of Toronto. In our judgment, the decision in Emperor v. Asa Ram 20 A.I.R. 1933 All. 593 was not correct.

21. With regard to Section 8 of the bye-laws in question, learned Counsel for the plaintiffs-respondents strenuously urged that no Municipal Board can be expected to be impartial or honest and that therefore that section also must be held to be unreasonable as it would enable the Municipal Board to favour some and to oppress the rest of the millowners. We consider it sufficient to say that we are not aware of any rule of law which can authorize the Courts to presume that all Municipal Boards are partial, corrupt and dishonest.

22. For the reasons which are stated above, we allow this appeal, set aside the decree passed by the Courts below and dismiss the suit with costs in all Courts.

#### Cases Referred.

1(1898) 2 Q.B. 91  
226 A.I.R. 1939 All. 466 at p. 794  
320 A.I.R. 1933 All. 593  
4(1896) 1896 A.C. 88