CALCUTTA HIGH COURT

Corporation of Calcutta

Vs.

Sub Post Master

Criminal Revn. No. 378 of 1948

(R.P. Mookerjee and Das Gupta, JJ.)

07.04.1949

JUDGMENT

R.P. Mookerjee J.

1. This rule was issued against an order of acquittal passed by the Municipal Magistrate, Calcutta and raises some very important questions of law.

2. A complaint was filed on behalf of the Corporation of Calcutta against the opposite party station inter alia that premises No. 43, Dharamtola Street, Calcutta was being used or permitted to be used as grains, Sour and atta shop without taking out a license for the year 1945-46 under Section 386, Calcutta Municipal Act. Summons was accordingly issued against the opposite party. The learned Magistrate by his order dated 1st March 1948 held that the storing of grains in the premises was by the Post and Telegraphs Department of the Government for the benefit of the employees of that Department, and not for trade, and to that purpose could not be taken to be "storing" as contemplated under Section 386 (1) (a), Calcutta Municipal Act; and that the prosecution was also bad in law as the relevant provisions could not bind the Crown. The Magistrate accordingly acquitted the accused of the charges.

3. Mr. Basu appearing on behalf of the Corporation contends that Section 386 read with Schedule 19, Calcutta Municipal Act, is attracted if any one of the different items mentioned in the Schedule are stored, irrespective of the fact whether such storing is for purposes of trade.

4. Chapter 26, Calcutta Municipal Act, is headed as for "Inspection and Regulation of premises, and of factories, trades and places of public resort." This chapter is sub-divided into two parts. Sections 380 to 384 are under the subheading "Premises generally." Sections 385 to 391 are under the sub-heading "Factories, trades and places of public resort." It is contended on behalf of the Corporation that the provisions of Section 386 are to be interpreted without any reference to the sub-heading "Factories, trades and places of public resort." This contention cannot be upheld. The headings prefixed to a section or a set of sections in modern statutes are regarded as preambles to those sections. It is now a settled rule that the function of the preamble is to explain what is ambiguous in the

enactment and it may either restrain or explain it as best suits the intention. *In re Carlton*[1], citing Corporation of the City of *Toronto v. Toronto Rail, way Co*[2]*.,*

5. On an examination of Section 385 and those follow it, it is clear that each one of those section relates to either factories, trades and places of public resort, If the provisions of Section 386 are not taken to be limited and applicable only to factories, trades and places or public resort, the result would be that whenever anything is stored, however small the quantity and for whatever purpose such storing may be made, a license will have to be taken out : Every householder must then take out a licence for keeping in his house even small quantities of articles for ordinary and daily use - an interpretation which is neither reasonable nor can be deemed to be convenient to the society at large. If the provisions are clear and unambiguous, a Court of law has nothing to do with the reasonableness or unreasonableness of such statutory provisions, except so for as it may help it in interpreting what the legislature has said. (*Cooke v. Charles A. Vogeler Co*[3]*.,* But while interpreting a provision in a statute when two meanings are possible, and one of the interpretations is neither convenient nor reasonable, then such intendment as would make the provision reasonable and just, would be more acceptable than the other. Coke on Littleton 97A. In our view, on the plain reading of Section 386 that section is not of general application. Even if there be any doubt as to the proper effect and scope of the section, we have to refer to the special heading "Factories, trades and places of public resort" and it must be held that Section 386 will be attracted not with reference to storing in every premises, but only in those which are limited by the description given by the sub-heading.

6. It is conceded that grains etc., in the premises are stored. But it is contended that such storing is not for purposes of trade, inasmuch as, these articles are meant for distribution amongst the employees of a particular Government Department at concession rates and such transactions, it is argued cannot be deemed to be in course of trade or business. 'Trade' in its primary sense means the exchange of goods for goods or goods for money. Reference is made to the Municipal Commissioners of *Barnagore v. Barnagore Jute Factory Ltd*[4]*.,* as an authority for holding that trade must always connote transactions with a view to earn profit only. In the case cited above Section 123, Bengal Municipal Act (Bengal Act XV [15] of 1932) read with Clause 1 of Schedule 4 of that Act, fell to be considered. Clause 1 is in the following terms :

> "Company transacting business within the Municipality for profit or as a benefit of society."

The test to be applied in that case was whether the concern transacted any business "for profit or not." This case, therefore, is no direct authority for the wider proposition that trade must always mean a transaction for profit.

7. In *Burmah Shell Oil Storage and Distributing Co. v. Hawrah Municipality*[5]*,* this Court has occasion to consider Section 175, Calcutta Municipal Act, which requires a license to be taken out by a person who carries on a

[1](1945) Ch. 372 : 114 LJ Ch. 289
[2](1907) AC 315 at p. 324 : (76 LJ PC 57)
[3](1901) AC 107
[4]41 CWN 662 : (AIR 1937 Cal 324)
[5]40 CWN 766 : (AIR 1936 Cal 477)

profession, trade or calling indicated in Schedule VI of the Act. Jack, J., observed that though "trade" under Section 175 is used in its ordinary sense viz., exchange of goods for money or

goods for goods with the object of making a profit, a statutory provision for taking out a licence is intended to control the carrying on of a trade simpliciter and is not meant to be a tax on the profits. In taxing statutes, as under the Income-tax Act, where the making of profits makes a person liable for the tax, "trades" must always be considered in the context of earning profits. But where a statute provides for a license or a permit being taken out for carrying on a business or a trade it is neither necessary nor relevant to consider whether the persons concerned actually earn a profit or even intended to make a profit out of the trade or carried on the business from some motive or other for benefiting the public or a section thereof by selling at a loss. The word "trade" is one of a very general application, and must always be considered along with the context in which it is used. Halsbury, Laws of England, Vol. 32 pp. 303/4.

8. In the case now before us the intendment of the Legislature was to regulate and restrict, for the sake of health and convenience of the public, storing of particular articles meant to be utilised for trade. So far as the particular provisions are concerned, it is immaterial whether the persons storing intend to or actually derive profit or not. The primary and dominant purpose of the statute is to be taken into consideration. In this view, it must he held, on the facts admitted, that the articles were stored for trade, and accordingly Section 386, Calcutta Municipal Act, is attracted unless its application is otherwise barred.

9. It is urged on behalf of the opposite party that the storing and sale in this case or by and on behalf of the Central Government and as the Crown is not expressly named in the Calcutta Municipal Act the Crown is not bound by the provisions. Reference is in this connection made to Province of *Bombay v. Municipal Corporation of the City of Bombay*[6]*,* which overruled the judgment of the Bombay High Court reported in Province of *Bombay v. Municipal Corporation of the City of Bombay*[7]*,* In this case the Bombay Corporation had under Sections 222 (1) and 265, City of Bombay Municipal Act, 1888 (the corresponding sections of the Calcutta Municipal Act, Bengal Act III [3] of 1923 being Rs. 244 and 252) attempted to lay watermains along Antop Hill Road, the property in which road belonged to Government. The test to be applied for deciding whether the Crown is bound by a statute or not, was held to be in no way different in the case of the Indian Legislature from that which has long been applied in England. It is incontrovertible that when the Crown is expressly named in a particular statute the Crown is bound thereby but difficulty arises when it has to be ascertained whether the Crown is bound by "necessary implications." The Judicial Committee also held that if it were manifest in the terms of the statute that it was the intention of the Legislature that the Crown should be bound the result would be the same as if the Crown had been expressly named.

10. On behalf of the Bombay Municipal Corporation, it had also been contended before the Judicial Committee that whenever a statute is enacted "for the public good" the Crown, though not expressly named, must be held to be bound by its provisions and as the Act was manifestly intended to secure public welfare it must bind the Crown. Though this proposition is supported by early authority and is to be found in Bacon's Abridgement

[6]73 IA 271 : (AIR 1947 PC 34)

[7] ILR 1944 Bom 95 at p. 101: (AIR 1944 Bom 26)

and other text books the Judicial Committee held that that view could not now be regarded as sound, except in a strictly limited sense. Reference was made to *Gorton Local Board of Health v. Prison commissioners*[8] (n) and the *Attorney-General v. Hancock*[9]*,* as instances where the Crown was held not to be bound although the statute in question was clearly for the public

benefit. Their Lordships further observed as follows :

> "Their Lordships prefer to say that the apparent purpose of the statute is one element, and may be an important element, to be considered when an intention to bind the Crown is alleged. If it can be affirmed that, at the time when the statute was passed and received the royal sanction, it was apparent from its terms that its beneficent purpose must be wholly frustrated unless the Grown were bound, then it may be inferred that the Crown has agreed to be bound, Their Lordships will add that when the Court is asked to draw this inference, it must always be remembered that that, if it be the intention of the Legislature that the Crown shall be bound, nothing is easier than to say so in plain words."

The distinction made in Scottish cases, between property held jure corona and other property of the Crown, was further held as not to have been adopted in England and does not seem to their Lordships to be in accordance with a body of English authority which, where an ancient doctrine of the common law of England is in question, ought in their Lordships' opinion to prevail. The law of England and of India was held to be the same, and their Lordships could find no reason to gay by necessary implication the Crown was bound by the relevant sections of the Bombay Municipal Act.

11. Mr. Basu appearing on behalf of the petitioner Corporation contends that the case before the Judicial Committee as also the decisions the *Hornsey Urban District Council v. Hennell*[10] and *Attorney-General v. Hancock*[11], refer to instances - where the relevant statutory provisions interfered with the right to property of the Crown but in the case now before us there is no question of any interference with any right to property. The provisions under consideration require certain licenses to be taken out; these provisions, it is urged do not in any way affect rights over property or prerogative of the Crown. No doubt this aspect of the question was not argued before the Judicial Committee in the *Province of Bombay v. Municipal Corporation of the City of Bombay*[12], Our attention is particularly drawn to the observations in *Attorney-General v. Hancock*[13],

> "The Rule is now well written and clear that if an Act of Parliament when otherwise divest the Crown of its property, rights, interest or prerogative, it is not to be construed as applying to the Crown unless the Crown has been mentioned either expressly or by necessary implication."

It is further pointed out that the relevant provisions of the Calcutta Municipal Act which are now before us for consideration only deal with the mode or manner of carrying on a business or trade and not with the carrying on the business itself.

[8](1904) 2 KB 165
[9](1940) 1 KB 427 : (1910-1 All England Reporter 32)
[10](1902) 2 KB 73 : (71 LJ KB 479)
[11](1940) 1 KB 427 : (1940-1 All England Reporter 32)
[12]73 IA 271 : (AIR 1947 PC 34)
[13](1940) 1 KB 427 at p. 439 (1940-1 All England Reporter 32)

12. Although this particular line of argument now advanced before us was not considered by the Judicial Committee, its decision, however, is in very general terms and is not in any way limited to proceedings affecting rights to property or prerogative of the Crown. The judicial Committee

came to the conclusion as stated above without making any distinction between provisions affecting rights to property or otherwise. Is was laid down that the law is not in any way different in the case of Indian Legislation from that which has long been applied in England. If we analyze the various decisions of the English Courts, it will be apparent that the principle has not been limited to provisions affecting rights to property only. One of the cases in point is *Cooper v. Hawkins*[14], The question in issue in this case was whether regulations regulating the speed of locomotives within certain areas applied to the running of a locomotive owned by the Crown and driven by a servant of the Crown or Crown service. Lord Alverstone, C.J., referred to his early observations in *Hornsey Urban District Council v. Hennel*[15], and applying the same tests to the facts of the later case, held that the regulations did not affect the Crown. In *Cooper v. Hawkins, (1904) 2 KB 164 : (73 LJ KB 113) (Supra)* the provisions affected the mode or manner of running a locomotive and did not affect any property belonging to the Crown. The observations of Lord Alverstone, C.J., and Wills, J., make it abundantly clear that the Crown is not ordinarily bound by statutory provisions and the question of right to property is not a determining factor.

13. In our view, the decision by the Judicial Committee in the *Province of Bombay v. Municipal Corporation of the City of Bombay*[16], must be taken to be an authority on the general question as to when the Crown is bound by statutory provisions. Decisions given by the Judicial Committee are binding on us and it is not open to this Court to go into the reasons or the absence of reasons supporting the decisions of the Judicial Committee.

14. Had the question been res integra and had it been open to us to consider the question untrammeled by a decision of the Judicial Committee we might have considered the reasonableness and propriety of applying the principles as enunciated by the English Courts and also how far they should be applied to Indian conditions. For some years past, the position of the Crown with regard to liability and procedure has been considered by the lawyers in England as being "antiquated and absurd as contrasted with that of ordinary individuals" and reform in this respect has been considered to be long overdue. The directions given by Lord Birkenhead L.C. in 1921 and Lord Haldene, L.C., in 1921, may be referred to in this connection. With the growing nationalisation of industries and the Government itself undertaking trade and commerce, the question has assumed greater importance. The Courts, however, are not concerned with the policy underlying such legislation or reform; we are only to apply the law as it stands. As stated already we are bound by the decision of the Judicial Committee and we must hold that the Crown is not affected by the provisions contained in Section 421, Calcutta Municipal Act, as it cannot be said that by necessary implication the Crown is bound by this Section of the Act. This Rule must accordingly be discharged.

15. On behalf of the petitioner Corporation we have been moved to grant a certificate under Section 205, Government of India Act. Section 205 refers only to eases involving substantial question of law as to the interpretation of the Government of India Act or any

[14](1904) 2 KB 164 : (73 LJ KB 113)

[15](1902) 2 KB 73 : (71 LJ KB 479)

[16]73 IA 271 : (AIR 1947 PC 34)

Order in Council made thereunder, or of the Indian Independence Act or of any Order made thereunder. Questions of law raised and decided in the appeal now before us do not touch any of the Acts or Orders referred to in Section 205 of the Act. Certificate is accordingly withheld.

Rule discharged.