

CALCUTTA HIGH COURT

Corporation of Calcutta

Vs.

Bhupal Chandra Sinha

Criminal Revn. Nos. 723 and 724 of 1949

(K.C. Chunder and Guha, JJ.)

15.12.1949

ORDER

K.C. Chunder

1. These two rules were issued at the instance of the Corporation of Calcutta in two cases in which two managers of Govt. Stores were proceeded against before the municipal Magistrate of Calcutta under Section 421, Calcutta Municipal Act - Act III [8] of 1923.

2. It appears that several maunds of whole, barley were seized from these two Government Stores and the finding of the learned Magistrate, after an elaborate discussion of all the evidence, is that these were unwholesome, unfit for human consumption and also injurious to public health. The learned Magistrate however, felt himself bound by two decisions, namely, the decision of the Judicial Committee in the case of *The Province of Bombay v. Municipal Corporation of the City of Bombay*¹, and that of this Court in the case of *The Corporation of Calcutta v. Sub Post Master, Dharamtolla Post Office*², by our learned brothers Rama Prosad Mookerjee and K.C. Das Gupta JJ. The Magistrate following those two decisions held that he had no jurisdiction to order destruction by the Calcutta Corporation of these unwholesome barley which it appears he would himself have gladly otherwise ordered.

3. Mr. Banerjea appearing on behalf of the opposite parties has put forward the argument that this Court has no jurisdiction to sit in revision over a Magistrate's order under Section 421, Calcutta Municipal Act. It appears that this point was raised by the Advocate-General of Bengal in the case of *Messrs. Sir Abudulla Harun and Co. v. Corporation of Calcutta* in³ and there was a difference of opinion between our learned brothers Rama Prosad Mookerjee and K.C. Das Gupta JJ. Rama Prosad Mookerjee J. was of the opinion that there was no force in the contention that a proceeding under Section 421, Calcutta Municipal Act, is not revisable under Sections 435 and 439, Criminal Procedure Code. Our learned brother K.C. Das Gupta J. was of the contrary opinion. Unfortunately, as the case was decided on another point this was not placed before a third Judge; so we do not have any conclusive authority of this Court. We have therefore, paid our utmost attention to this point and we

¹73 IA 271 : (AIR 1947 PC 34)

³Cri. Revn. No. 679 of 1948 : (AIR 1960 Cal 86 : 51 Cr. LJ 316)

² being Cri. Revn. No. 378 of 1948, D/-7-4-1949 : (AIR 1960 Cal 417)

are unable to accept the argument of the learned Advocate-General adopted by Mr. Banerjea before us. We are clearly of opinion that a proceeding under Section 421, Calcutta Municipal Act is a proceeding before a criminal Court within the meaning of Section 435, Criminal Procedure Code. It is obvious that under Section 435, Criminal Procedure Code, an executive act cannot be revised by this Court. The section itself is clear and therefore, we do not cite any authorities. The section itself says that it must be the proceeding of "a criminal Court". So, the whole question is whether, when acting under Section 421, Calcutta Municipal Act and like sections, the municipal Magistrate is a criminal Court or not. The Local Government which appoints the municipal Magistrate under the Municipal Act is only authorised to do so under Section 531. Whatever other powers a Magistrate acting under the Criminal Procedure Code or under any other law may have, a Magistrate appointed a municipal Magistrate under Section 531 may be appointed only "for the trial of offences against this Act," that is to say, the Calcutta Municipal Act, "and the rules and bye-laws made thereunder". It is definitely stated that such Magistrates shall be called municipal Magistrates and then provision is made for their pay, pensions, leave, salary etc., and how this is to be realised from the Calcutta Corporation. It lays down that each of such Magistrates shall have jurisdiction over the whole of Calcutta. Therefore, a Municipal Magistrate can only be appointed for one purpose and one purpose alone, namely, trial of offences and where the Act imposes upon the Municipal Magistrates certain duties it must be in accordance with the purpose for which he is appointed and, therefore, all the sections in which the Municipal Magistrate is asked to do something are necessarily to be interpreted as sections dealing with cases of offences.

4. Mr. Banerjea has drawn our attention to Section 488 of the Act in which certain offences are made liable to penalty by way of a fine. An offence is an act which is made punishable and punishment need not be only of fine or imprisonment. There may be other methods of punishment, namely, destruction, demolition etc. Therefore, the fact that in Section 488 of the Act provision is made for punishment with fine of certain offence does not go to show that when penalizing other acts by order of destruction at the coat of the party, of demolition etc., the Municipal Magistrate is exercising any power or function outside the Calcutta Municipal Act. There is no provision for appointment of a Municipal Magistrate as executive officer. As these are powers or functions exercised under the Act itself and as under the Act he can only be appointed for the trial of offences these proceedings before him are for trial of offences and therefore, when trying such offences he is a criminal Court and as he is a criminal Court, Section 435 applies and this Court has the power to call for records etc., and interfere under Section 439, Criminal Procedure Code. We are of opinion, therefore, that there is no substance in the contention that this Court has no jurisdiction to revise an order under Section 421 or the cognate sections by the Municipal Magistrate of Calcutta.

5. We, therefore, now enter into the main point. The learned Magistrate in the present case unfortunately did not see the difference between the case then before our learned brothers Rama Prosad Mookerjee and K.C. Das Gupta, JJ., namely, *Corporation of Calcutta v. Sub-Post Master, Dharamtolla Post Office*⁴. and the present case. The law is clear since the decision of the Judicial Committee in the case of the *Province of Bombay v. Municipal Corporation of the City of Bombay*⁵ that ordinarily the Crown may not be

⁴ Cri. Revn. No. 378 of 1948 : (AIR 1950 Cal 417)

⁵13 IA 271 : (AIR 1947 PC 34)

bound by a Statute and the test is whether expressly or by necessary implication in that particular

Statute, the Crown has been bound. In the particular case then before them which was a case of not taking out a trade license by the Central Government, their Lordships Rama Prosad Mookerjee and K.C. Das Gupta JJ. came to the conclusion that neither expressly nor by necessary implication could it be said that the Crown was intended to be bound by such a section of the Calcutta Municipal Act which required such a license to be taken out. The Judicial Committee decision itself lays down the criterion when it may be said that by necessary implication the Crown is made bound in a particular Statute. It may be said here that in this Statute either under Section 421 or under other cognate sections relating to public health the Crown had not been bound. The Crown will be bound if by necessary implication it is to be held that the Crown is bound.

In the Judicial Committee decision this is the test that was formulated by their Lordships :

"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 Crown were bound, then it may, be inferred that the Crown has agreed to be bound."

These words of the Judicial Committee will clearly show the distinction between the present group of cases and the group of cases with which our learned brothers were dealing, Cases of this nature which safeguard the public health of the biggest City in the East are under the powers given to the Corporation of Calcutta to preserve the public health by destruction of diseased animals or of unwholesome food, by removal of congestion or causes thereof etc., and of other things which interfere with proper health and sanitation. This is the fundamental object of the existence of a Municipality. If in cases of this nature the Crown is left free to sell or otherwise distribute injurious food or, as Mr. Basu has very rightly said, 'poison the whole of the City of Calcutta with unwholesome, unsound barley or other food' then it cannot but be said that it will be almost useless to enact sections to prevent such act and to create a Municipal body. The entire good work of the Corporation of Calcutta can be frustrated if the Crown is guilty of such acts as have been proved in the present case before the Magistrate, to have been done by those two Government Ration shops. According to the test laid 'down by' the Judicial Committee we are of opinion that in the present case, and in cases to this nature, the Crown is by necessary implication also to be considered as bound. The Crown cannot evade its own responsibility to obey such laws of health which are fundamental if a Municipality is to function properly and if the Crown violates the same it has to be made to observe such laws by means of Magisterial action. Under the circumstances we are of opinion that the Municipal Magistrate had full jurisdiction in the present case to order the destruction of the unwholesome barley.

6. Mr. Banerjee has urged before us that his clients has many objections about the mode of seizure of the articles etc. but it appears from the judgment of the Municipal Magistrate that these points were not urged before him. It is possible that Mr. Banerjee's clients relying upon the supposed immunity from an action in such cases of the Crown might not have raised these points fully before the court at the time of argument as not necessary.

7. We, therefore, set aside the order of the Municipal Magistrate and remand the case back to him for decision on the other points escape the points of unwholesomeness of the barley and of

jurisdiction which have been finally decided here and then pass such orders as be may be entitled to pass in law.
Case remanded.