

CIVIL MISCELLANEOUS..

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

CHAMAN LAL AND ANOTHER,—*Petitioners.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 1695 of 1964.

Punjab Municipal Act (III of 1911)—S s. 188 and 199—Rickshaw Bye-laws framed under, by Jullundur Municipal Committee—Clause 4 banning the issue of fresh licences—Whether ultra vires.

Held, that it is apparent from the plain reading of clauses (a), (b) and (p) of section 188 of the Punjab Municipal Act, 1911, that no power is given to the Municipal Committee by the statute to restrict the number of licences or to prohibit the grant thereof. It can only lay down the conditions for their grant. The Committee's power is to provide for the fees payable for such licences and the conditions on which they may be revoked, and among other things provides for a minimum breadth for wheel tyres and for a minimum diameter of the wheels. The Committee can also limit the rates which may be demanded for hire of any carriage and the limit of the load to be carried. The Committee can also restrict the use of a vehicle on certain municipal roads, either wholly or during certain hours. If an owner of a vehicle complies with the requirements which are prerequisite to the grant of a licence, the Committee is bound to grant him the licence. The provisions of section 188 do not warrant the assumption that power to grant licences also implies the power to refuse licences. The power to refuse licences can only be implied to the extent that a licence will be granted only if the conditions laid down under the validly framed bye-laws under section 188 are complied with. If an applicant for a licence of a vehicle complies with all those conditions, no option is left with the Municipal Committee but to grant the licence.

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under section 17 of the Bombay Sales Tax Act, was issued to them, they should have gone to Bombay and raised all these objections before the Collector there. They are themselves to be blamed for not taking up the right course at the proper stage. Besides, a remedy was open to them even under the provisions of section 4 of the Revenue Recovery Act.

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This section says—

“S. 4(1) When proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a certificate, that person may, if he denies his liability to pay the amount or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit for the payment of the amount or the part thereof so paid.

(2) A suit under sub-section (1) must be instituted in a Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate, and the suit shall be determined in accordance with the law in force at the place where the arrear accrued^{ru} or the liability for the payment of the sum arose.

(3) In the suit the plaintiff may, notwithstanding anything in the last foregoing section, but subject to the law in force at the place aforesaid, give evidence with respect to any matter stated in the certificate.

(4) This section shall apply if under this Act as in force as part of the law of Pakistan or Burma, or under any other similar Act forming part of the law of Pakistan or Burma, proceedings are taken against a person in Pakistan or Burma, “as the case may be, for the recovery of an amount stated in a certificate made by a Collector in any State to which this Act extends.”

The remedy by way of a suit was, therefore, available to the petitioners, which, admittedly, they did not make use

Held, that the charter of the Municipal Committee is the Punjab Municipal Act. It must act within the power conferred on it by the Act. If it exceeds its statutory power, the excess would be *ultra vires* the Act.

a Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the bye-laws framed by the Municipal Committee, Jullundur and approved and notified by the Punjab State as per notification No. S. O. 139/P.A. 31/11/8-201/64, published in the Punjab Gazette, Part I-A, dated the 27th March, 1964.

G. P. JAIN AND B. S. GUPTA, ADVOCATES, for the Petitioners.

H. R. SODHI AND A. L. BAHRI, ADVOCATES, for the Respondents

ORDER

The judgment of the Court was delivered by:—

MAHAJAN, J.—This petition is by two persons—one is an owner of the rickshaw (Chaman Lal) and the other is a driver of the rickshaw (Tara Singh). They made applications for the grant of licences under clause 2 of the Rickshaw Bye-laws, which were made by the Municipal Committee, Jullundur in exercise of the powers conferred on it by sections 188 and 199 of the Punjab Municipal Act, 1911. The notification is dated the 17th of March, 1964, and was published in Part I-A, of the Punjab Government Gazette, dated the 27th of March, 1964. These bye-laws came into force on the 1st of July, 1964. The applications of the petitioners were rejected under Clause 4. Clause 4 is in these terms:—

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“No fresh licence shall be issued after the enforcement of these bye-laws; provided that the existing licences may be renewed subject to the conditions mentioned in these bye-laws.”

Clause 5 fixes the maximum number of rickshaws which can be licensed within the limits of the municipality either for hire or for private use equivalent to the number of valid licences in operation in the municipality on the 31st day of March, 1964. The bye-laws contemplate that every year 10 per cent of the licences as prevalent on the 31st day of March, 1964, will be reduced. We are not here concerned

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with these provisions because the grievance of the petitioners is that the Committee in law could not refuse to grant the petitioners licences in case they satisfied the other requirements of the bye-laws. It is against this order that the present petition has been preferred under Articles 226 and 227 of the Constitution of India.

The learned counsel for the petitioners has raised the contention that clause 4 is beyond the power of the Municipal Committee and is *ultra vires* section 188 of the Punjab Municipal Act. The learned counsel for the Municipal Committee sought to justify the validity of the bye-laws by reference to Clauses (a), (b) and (p) of Section 188. These clauses so far as they are relevant for our purpose are set out below:—

“188. A Committee may, and shall, if so required by the State Government, by bye-law—

(a) render licences necessary for the proprietors or drivers of vehicles (other than motor vehicles), or animals kept or plying for hire within the limits of the municipality, and fix the fees payable for such licences and the conditions on which they are to be granted and may be revoked, and may by such conditions provide among other things for a minimum breadth for wheel tyres and for a minimum diameter of the wheels;

(b) limit the rates which may be demanded for the hire of any carriage, cart, or other conveyance, or of animals hired to carry loads or persons, or for the services of persons hired to carry loads or to impel or carry such conveyances, and limit the loads which may be carried by any animal, or carriage, cart or other conveyance, plying for hire, within the limits of the municipality:

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“(p) regulate or prohibit any description of traffic in the streets and provide for the reduction of noise caused thereby.”

It will be apparent from the plain reading of these Clauses that no power is given to the Municipal Committee by the statute to restrict the number of licences or to prohibit the grant thereof. It can only lay down the conditions for their grant. The Committee's power is to provide for the fees payable for such licences and the conditions on which the licences are to be granted, the conditions on which they may be revoked, and among other things provide for a minimum breadth for wheel tyres and for a minimum diameter of the wheels. The Committee can also limit the rates which may be demanded for hire of any carriage and the limit of the load to be carried. The Committee can also restrict the use of a vehicle on certain municipal roads, either wholly or during certain hours. If an owner of a vehicle complies with the requirements which are prerequisite to the grant of a licence, the Committee is bound to grant him the licence. The power to make bye-laws regarding licensing of motor vehicles is excluded, though there is the power under clause (b) to fix the hire of such vehicles or the loads that such vehicles may carry. The provisions of section 188 do not warrant the assumption which the learned counsel for the Municipal Committee wants us to make that the power to grant licences also implies the power to refuse licences. The power to refuse licenses can only be implied to the extent that a licence will only be granted if the conditions laid down under the validly framed bye-laws under section 188 are complied with. In case there is non-compliance with the validly laid down conditions, a licence can be refused. If an applicant for a licence of a vehicle complies with all those conditions, no option is left with the Municipal Committee, but to grant the licence.

The learned counsel for the Municipal Committee further raised the contention that the restrictions had been imposed in the general interest of the public, namely that the use of human beings as beasts of burden was abhorrent, and, therefore, the bye-laws are justified. This argument has no bearing in the context of section 188. The charter of the Municipal Committee is the Punjab Municipal Act. It must act within the power conferred on it by the Act. If it exceeds its statutory power, the excess would be *ultra vires* the Act. As already pointed out, the Act nowhere confers power on the Municipal Committee to prohibit

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absolutely or partially the use of vehicles. It only confers a power on the Municipal Committee to lay down rules and regulations for their use and hire. We are, therefore, clearly of the view that Clause 4 of the bye-laws, which came into force on the 1st of July, 1964, is *ultra vires* section 188 of the Punjab Municipal Act and must be struck down.

The learned counsel for the Municipal Committee relied on the following decisions:—

- (1) *Lucknow Municipality v. Iqbal Singh* (1);
- (2) *S. Iqbal Singh v. Municipal Board* (2);
- (3) *Veerappa v. Raman and Raman Ltd.* (3);
- (4) *Narendra Kumar v. Union of India* (4) and
- (5) *Satya Ranjan v. Commr. of Police, Calcutta* (5).

None of these decisions supports the contention of the learned counsel for the Municipal Committee that Clause 4 of the bye-laws is *intra vires* section 188 of the Punjab Municipal Act. On the other hand the observations in *Tahir Hussain v. District Board, Muzaffarnagar* (6) and *Lokanath Misra v. State of Orissa* (7), support the contention of the learned counsel for the petitioners.

In view of ^w that has been stated above, we are not called upon in this case to decide the larger question as to the bye-laws being *ultra vires* Article 19 of the Constitution of India. The decisions cited by the learned counsel for the Municipal Committee and set out above pertain to that field and as already stated have no bearing on the limited question on the basis of which this petition is being decided.

For the reasons given above, this petition is allowed and clause 4 of the Rickshaw Bye-laws is struck down as *ultra vires* section 188 of the Punjab Municipal Act. There will be no order as to costs.

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- (1) A.I.R. 1958 All. 853.
 - (2) A.I.R. 1959 All. 186.
 - (3) A.I.R. 1952 S.C. 192.
 - (4) A.I.R. 1960 S.C. 430.
 - (5) A.I.R. 1955 Cal. 417.
 - (6) A.I.R. 1954 S.C. 630.
 - (7) A.I.R. 1952 Orissa 42.