

Trilok Chand And Ors. vs State on 2 December, 1952

Equivalent citations: AIR1953ALL404, AIR 1953 ALLAHABAD 404

ORDER

Bind Basni Prasad, J.

1. These three criminal revisions came up for hearing before me on 30-5-1952, when I found it necessary to refer two questions of fact to the lower Court for determination. The findings on those two points have now been received from the learned Magistrate and learned counsel for the parties have been heard at length.

2. In the town of Faridnagar in the district of Meerut there is a Town Area Committee. It has framed bye-laws purporting to act under Sections 293 and 298 (2) of the U. P. Municipalities Act, 1916, as applied to town areas under Section 88 of the U. P. Town Areas Act, 1914. Clause (i) of these bye-laws provides that there shall be imposed Tehbazari at the rate of one anna per seer upon Kotogem and Vanaspati. Clause (2) provides that the fee aforesaid shall be paid to an officer appointed for this purpose by the Committee or to a thekadar to whom the theka for the collection of these dues might be given by the Committee. Clause (3) provides that the aforesaid fee shall be paid on the import of the Vanaspati or Kotogem within the limits of the Town area. Clause (4) requires that the vendors of Vanaspati and Kotogem shall take a licence from the Committee. Clause (5) provides that no one who has not taken out a licence shall be entitled to sell Kotogem or Vanaspati. Clause (6) provides for a certain procedure for the grant of the licence. Clause (7) provides that the vendors of Vanaspati and Kotogem shall put up a sign-board at their shops and shall keep their shops in a sanitary condition. Clause (8) provides that if a consumer or a vendor brings or imports Vanaspati or Kotogem within the limits of the Town Area then he shall have to pay the aforesaid dues but if anyone purchases Vanaspati or Kotogem from a vendor within the limits of the Town Area then no tax shall be payable. Clause (9) provides that the contravention of these bye-laws shall be punishable with fine which may extend to Rs. 200.

3. In Criminal Revision No. 1175 of 1950 the applicants are Trilok Chand and Mool Chand. The charge against them was "under Section 298 (2) 1B/293 (1) of the Municipalities Act and Bye-law No. 9, dated 24-4-1945 of the Town Area." The finding of the learned Magistrate is that the accused did not pay the tax nor did they maintain the accounts properly. They were, therefore, sentenced to a fine of Rs. 50 each or in default to undergo three days' rigorous imprisonment. They went in revision and contended that the Town Area had no authority to frame the bye-laws under which the tax was levied. Learned Sessions Judge dismissed this contention with the remark that it was not shown to him as to how the imposition of the tax was ultra vires and the point was not raised in the lower Court. In this Court the contention is repeated that the bye-laws are ultra vires.

4. In Criminal Revision No. 1176 of 1950 the applicants are Manohar Lal and Kanti Saran. They were charged with offences "under Section 298 (2) 1B/293 (1) of the Municipalities Act and Clause (9) of the Town Area Bye-laws." In this case the learned Magistrate held that the accused were not guilty of not maintaining proper account but they were guilty of not paying the tax on Kotogem. In the result they were sentenced to a fine of Rs. 50 each or in default to undergo fifteen days' rigorous imprisonment. The same contentions were raised by these applicants also before the learned Sessions Judge and in this Court as by Trilok Chand and Mool Chand.

5. In Criminal Revision No. 1177 of 1950 the applicants are Bisheshar Dayal and Madan Lal. They were charged "under Section 298 (2) 1B/293 (1) of the Municipalities Act and Bye-law No. 7." The finding of the learned Magistrate was that the stock register of the firm Bisheshar Dayal Madan Lal was incomplete from 26th to 30th May 1949. They were not paying the tax on Kotogem and were not maintaining the cash memos. In the result, they were sentenced to a fine of Rs. 150 each or in default to undergo fifteen days' rigorous imprisonment each.

6. It is not disputed that the applicants in all the three cases are vendors of Vanaspati or Kotogem and carry on business in the same. The trials were summary.

7. The question which was considered at the last date of hearing was whether or not the applicants were carrying on the business of the sale of Kotogem and Vanaspati on the land belonging to the Town Area. I referred the following two issues for a finding :

"1. Whether the land upon which the Bazar in Faridnagar is situated and in respect of which the Town Area Committee of Faridnagar made the bye-laws in dispute vests in that Committee or is entrusted to the management of that Committee ?

2. In particular whether the land upon which the shops of Trilok Chand, Kr. Manohar Lal, Kanti Sharan, Bisheshwar Dayal and Madan Lal are situated belongs to them or is vested in or entrusted to the management of the Town Area Committee ?"

8. The learned Magistrate has submitted the following finding. The land upon which the bazar in Faridnagar is situated and in respect of which the Town Area Committee made the bye-laws in dispute either vests in that Committee or has been entrusted to the management of that Committee. The Town Area looks after the sanitation and lighting of the bazar. The land on which the building of the shops of the applicants are situated belongs to the applicants themselves, but the land in front of them belongs to the Town Area. The applicants use also the land in front of their shop buildings as they have their Chabutras etc. on the land of the Town Area and use the same.

9. So far as the levy of Tahbazari by the Town Area is concerned there can be no doubt that it can do so. Section 293, U. P. Municipalities Act, as extended to the town areas provides :

"The Town-Area-Committee may charge fees to be fixed by bye law or by public auction or by agreement, for the use or occupation (otherwise than under a lease) of any immovable property vested in, or entrusted to the management of, the Town

Area, including any public street or place of which it allows the use or occupation whether by allowing a projection thereon or otherwise."

On the findings received from the learned Magistrate it is clear that not only do the applicants in these three cases use the buildings of their shops but also the land in front of them which belongs to the Town Area Committee. Their liability to pay Tehbazari is, therefore, beyond doubt. I may also here refer to Section 14 (2) (b), Town Areas Acts, which authorises a Town Area Committee to impose taxes and fees in the nature of Tehbazari "for the use of public land or public roads."

10. But while the Committee has the power to realise Tehbazari in respect of the use of public land or public roads the manner in which it has tried to enforce this right makes the bye-laws illegal. The whole tenor of the bye-laws is to levy a tax on the import of Vanaspati or Kotogem within the limits of the Town Area. Clause (8) of the bye-laws provides that a consumer or a vendor both will be liable to pay the Tehbazari tax on importing Vanaspati or the Kotogem within the limits of the Town Area and that no such tax will be leviable on the purchase of Kotogem within the limits of the Town Area. It is clear that though the name of Tehbazari has been given to this levy it is really a kind of octroi.

11. Sri S. N. Misra, learned counsel for the Town Area Committee, admits that Town Area Committee has no power to impose octroi or any import duty, nor does he dispute the proposition that the bye-law so far as it goes to levy a tax on consumers is beyond the powers of the Town Area Committee. Section 298, U. P. Municipalities Act, which contains a provision as to the making of the bye laws has been modified to a great extent in its application to the Town Area Committees. This will be evident from a perusal of page 64 of the Town Area Manual, Uttar Pradesh, corrected upto 1-12-1951. I asked Sri Section N. Misra learned counsel for the Town Area Committee, to indicate as to under which provision of Section 298, U. P. Municipalities Act, as applied to Town Areas this bye-law fell. He was unable to point out to me any provision in Section 298 as applicable to Town Areas under which this bye-law could be framed.

The action of the Faridnagar Town Area Committee in framing these bye-laws by virtue of powers vested in it under Section 298 (2), U. P. Municipalities Act, is evidently wrong. It is not the form, but the pith and the substance of the bye-laws which must be seen. Although the word "Tehbazari" has been used in the bye-laws it is in essence intended to levy an octroi or an import duty for which the Town Area had no authority. The impost has not the character of Tehbazari for the use of public land or roads. It is leviable irrespective of the fact whether a person is a consumer or a dealer, whether he uses or not public land or road. In declaring these bye-laws illegal I want to make it clear that the right of the Town Area Committee to realise Tehbazari in a suitable manner is not intended to be taken away. It is open to the Committee to levy the Tehbazari by framing fresh and suitable bye-laws and realising it in a legal manner. The bye laws as they stand cannot be given effect to as they are beyond the purview of the Town Area Committee. That being so, the contravention of any provision of these bye-laws by the applicants can constitute no offence.

12. For the reasons given above, the aforesaid three revisions are allowed. The convictions and the sentences are set aside and the fine, if paid, shall be refunded.

13. A copy of this judgment shall be sent to the Government of Uttar Pradesh in the Local Self Department for information and necessary action.