

Balla And Ors. vs The State Of U.P. on 30 November, 1955

Equivalent citations: AIR1956ALL335, 1956CRILJ661, AIR 1956 ALLAHABAD 335

ORDER

Asthana, J.

1. This is a reference by the Additional Sessions Judge of Saharanpur, recommending that the conviction and sentence of the applicants under Section 175, District Boards Act, 1922 (U. P. Act 10 of 1922) be quashed.

2. The accused were convicted for contravention of bye-law No. 1 framed by the District Board, Saharanpur, under Section 174(2)(k), District Boards Act published in Government Notification No. 2905/21-7(44-45) dated 1-6-1949 and subsequently amended by Notification No. 12883/21-25 (49-50) dated 21-8-1951 and No. 10574/21-25 (49-50) dated 21-6-1952.

The bye-law in question provides that no person shall slaughter or cause to be slaughtered any cow bull, bullock, he and she calf, she buffalo, young or old, in any place situated within the area of the District Board, Saharanpur.

3. The prosecution case against the accused was that in contravention of the aforesaid bye-law they had slaughtered a cow, the flesh of which was recovered from their houses by the Sub-Inspector, Sri A. A. Zaidi, on receipt of information from one of the prosecution witnesses, namely, Tufail Ahmad. The case was tried summarily by the Magistrate. The accused denied that they had slaughtered any cow in contravention of the aforesaid bye-law.

It was also contended on their behalf that the aforesaid bye-law was 'ultra vires' as the District Board, Saharanpur, had no right to frame such a bye-law under the provisions of the Act. The learned Magistrate found that the accused had slaughtered a cow in contravention of the aforesaid bye-law and therefore convicted each of them under Section 175, District Boards Act and sentenced each of them to a fine of Rs. 80/- and in default of payment of fine to one month's simple imprisonment.

4. The learned Sessions Judge in revision was of opinion that the District Board, Saharanpur had no right to frame the bye-law in question prohibiting the slaughter of cows in the slaughter house, as according to Section 174(2)(k) it could frame a bye-law only to regulate the slaughter houses, and the word "regulate" used in Sub-section did not include the power of prohibition.

He also found that from the evidence on the record it was not proved that the meat which was

recovered from the houses of the different accused was of a cow or that the accused had slaughtered a cow and, in absence of such evidence, the conviction was not maintainable.

5. None appeared on behalf of the accused before me. Learned counsel for the State supported the reference. It was argued by him that the Legislature by using the word "regulating" in Clause (k) did not intend to include prohibition because if it were so, it would not have used the words "prohibiting as well as regulating" in the different Sub-sections of Section 174, Sub-section (2).

It was contended that where the Legislature intended to empower the District Board to frame bye-laws prohibiting certain acts it had used the word "prohibiting" and as in Clause (k) the word "prohibiting" had not been used but only the word "regulating" had been used, it was obvious that the Legislature did not intend to confer any power on the Board to frame bye-laws prohibiting the slaughter of any particular kind of animal in the slaughter house.

In my opinion, the contention appears to be correct. If the Legislature by using the word "regulating" in the different clauses of Sub-section (2) intended that this word included the power of prohibition also, there does not appear any satisfactory reason why the Legislature should have used both the words "regulating" and "prohibiting" in the different clauses.

6. In my opinion the word "regulating" slaughter houses means laying down the terms and conditions according to which the slaughter houses shall be worked as also the hours during which they would be worked but it does not mean that any particular kind of animal shall or shall not be slaughtered in the slaughter house. If it were so intended, it would have been clearly mentioned in the clause in this connection a reference to Clause (q) may be of some help. This clause runs as follows:

"Providing for the regulation or prohibition of any description of traffic on any public road where such regulation or prohibition appears to the Board to be necessary,"

It would appear from the, above clause that the Board has been given the power to frame bye-laws providing for the regulation of any description of traffic on any public road and also the power prohibiting any particular kind of traffic on such road. In view of the above fact I am of opinion that according to Clause (k) of Sub-section (2) of Section 174, the District Board could frame a bye-law only to regulate the slaughter houses but it could not frame any bye-law prohibiting the slaughter of any particular kind of animal in the slaughter house. As such, the bye-law No. 1 prohibiting the slaughter of a particular kind of animal in the slaughter house within the District Board of Saharanpur is beyond the power of the District Board and is, therefore, 'ultra vires' and unenforceable.

7. On the question of fact also I am of opinion that there is no satisfactory evidence that the accused slaughtered a cow. The mere fact that some flesh was recovered from the houses of the different accused and also a Kulhari and a knife from the house of one of the accused, namely Abdul Rahman does not necessarily mean that the flesh which was recovered was of a cow or that a cow was slaughtered by the accused.

As has been observed by the learned Additional Sessions Judge, the flesh which was recovered from the houses of the different accused was sent to a doctor for medical examination but the doctor who examined it was not produced in evidence in order to prove that it was the flesh of a cow.

8. In the circumstances, I am of opinion that the conviction of the accused under Section 175, District Boards Act cannot be maintained. I therefore, accept the reference, set aside the conviction and sentence of the accused under the aforesaid Section and direct that the fine, if paid, be refunded.