

Notified Area Committee vs Majid on 8 March, 1951

Equivalent citations: AIR1952ALL594, AIR 1952 ALLAHABAD 594

JUDGMENT

P.L. Bhargava, J.

1. This is a reference, under Section 438, Criminal P. C., by the learned Ses. J. of Bulandshahr. The facts & circumstances leading to the reference are these: The Notified Area Committee of Anupshahr, in the district of Bulandshahr, through its President, prosecuted one Majid under Section 299, U. P. Municipalities Act, for his failure to pay tahbazari, due under the bye-laws framed by the Committee, in respect of his lorry which had been brought within the limits of the Anupshahr Notified Area. The prosecution was launched, on 11-5-1949, under the authority conferred upon the President of the Committee in a resolution, dated 25-6-1943 passed by the Committee, which had been dissolved in September 1947. The old Committee, which had passed the resolution, consisted of six members, while the new Committee, in whose time the prosecution was launched, consisted of fourteen members.

2. The defence set up by Majid inter alia was that the prosecution was illegal, inasmuch as the new Committee had not authorised its President to launch such prosecutions, & that the authorisation of its President by the old Committee was no longer effective at the time when he was prosecuted.

3. The plea raised in defence was upheld by the trial Ct., the Tahsildar-Mag. of Anupshahr, who was of the opinion that the President of the new Committee was not competent to order the prosecution as he had not been authorised by the Committee by any general or special order in this behalf & that the prosecution of Majid was consequently bad. He, therefore, acquitted Majid. The matter was then taken in revision to the learned Ses. J. who held that the President of the Committee had the requisite authority to order prosecution of Majid; consequently, the order of the trial Court was liable to be set aside. Accordingly, he made this reference, with a recommendation that the order of acquittal passed by the trial Court, be set aside & a retrial be ordered or any other suitable order be passed.

4. Section 337, Municipalities Act, provides for the constitution of notified areas; & Section 338 empowers the State Govt. by notification to extend the provisions of the Act in regard to the imposition of taxes in & constitution of committees for notified areas. The relevant portion of Section 338 is as follows:

"(1) The Provincial Govt. may by notfn.--

(a) apply or adapt to a notified area the provisions of any section of this Act, or of any Act, which may be applied to a municipality, or part of such section, or any rule,

regulation or byelaw in force or which can be imposed in a municipality under the provisions of this or any other Act, subject to such restrictions & modifications, if any, as it may think fit ;

(b) impose, in the whole or a part of such area, any tax which might be imposed therein under the provisions of this or any other Act, if the said area were a municipality;

(c) fix the number of persons who shall form a committee for the purpose of the assessment & recovery of a tax imposed under Clause (b), & in order to arrange for the due expenditure of the proceeds of such tax, & for the preparation & maintenance of proper accounts, & generally for enforcing the provisions of any section or rules, regulations or byelaws applied or adopted under Clause (a), (2) A committee appointed under Clause (c) of Sub-section (1) shall consist of three or more members to be appointed by the Commissioner or elected in the manner prescribed by this Act, or by Rules, or partly so appointed & partly so elected as the Provincial Govt. may by general or special order prescribe.

(3)

(4) For the purposes of any enactment which may be extended to notified area the Committee appointed for such area under Clause (c) of Sub-section (1) shall be deemed to be a board under this Act & the area to be a municipality."

5. In the year 1921, the number of persons who were to form a Committee for the Anupshahr Notified Area was fixed at three; that number was subsequently increased to five, in the year 1931, & later on to fourteen, in the year 1947.

6. Section 6, Municipalities Act, which has been made applicable to the Notified Areas, is in these terms :

"6. Incorporation & general functions of municipal boards.--In every municipality there shall be municipal board & every such board shall be a body corporate by the name of the municipal board of the place by reference to which the municipality is known, having perpetual succession & a common seal, &, subject to any restriction or qualification imposed by this or any other enactment, vested with the capacity of suing & being sued in its corporate name, of acquiring, holding & transferring property, movable or immovable, & of entering into contracts."

Section 18, U. P. General Clauses Act, 1904, lays down that in any United Provinces Act it shall be sufficient for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relations to the functionaries or corporations.

7. A notified area being a body corporate, having perpetual succession & a common seal, one committee which replaces the other would be the successor body corporate & the latter would enjoy the rights & suffer the liabilities of the former, for the obvious reason that both were & are vested with the same capacity of suing & being sued in its corporate name, of acquiring, holding & transferring property, movable or immovable & of entering into contracts.

8. The Anupshahr Notified Area Committee originally consisted of three members ; the next Committee consisted of six members & the existing Committee consists of fourteen members. It was the Notified Area Committee functioning within the limits of the Anupshahr Notified Area whether it consisted of three or more persons, & even now a Notified Area Committee is functioning. These Committees all along had a common seal & have been governed by the rule of perpetual succession. They exercised the same functions one after the other, irrespective of the change in their personnel & constitution. The personnel or the constitution of the Committee had nothing to do with the functions, rights & liabilities of the Committee.

9. A Notified Area Committee is bound by the actions or resolutions of the Committee, whom it replaces. If that were not so, any amount of confusion & practical difficulties would arise. As we have already seen, the Committee is vested with the capacity of suing & being sued in its corporate name, of acquiring, holding & transferring property, moveable or immovable, & of entering into contracts. Any suit or proceeding filed or initiated by one Committee will not fail if it is replaced by another. The Committee will not lose the property acquired by the former Committee. It will have the right to hold property, movable or immovable, acquired by the old Committee. The transfer made by one Committee will be valid even if that Committee has been replaced by another Committee. The contracts entered into by one Committee will be binding on the new Committee. The officers appointed by one Committee will continue to function, even after the Committee who appointed them has been replaced by another Committee. They will continue to perform the duties assigned to each of them. In other words, the actions & resolutions of one Committee will be binding & continue to be effective, even if the Committee responsible for them is replaced by another Committee. Consequently, the new Committee, which was formed after the dissolution of the old Committee in 1947, was bound by the resolutions passed & the decisions taken by the old Committee. It was immaterial whether the old Committee consisted of a lesser or larger number of persons.

10. The resolution of the year 1943 passed by the Committee then in existence authorised its President & Vice-President to order prosecutions on its behalf. The authorization was by the body corporate, the Notified Area Committee & to the President & Vice President of the Committee not of that or any other particular Committee but of the Committee functioning in the Anupshahr Notified Area. That resolution being binding on the new Committee, the President & Vice-President of the Committee could exercise that power until the new Committee decided to authorise someone else in that behalf.

11. Section 314, Municipalities Act, relates to the authority for prosecution & lays down :

"Unless otherwise expressly provided, no Ct. shall take cognizance of any of the offences punishable under this Act or under any rule or byelaw, except on the

complaint of, or upon information received from, the board or some person authorised by the board by general or special order in this behalf."

12. The question for consideration before the trial Court was whether the President of the Committee had been authorised by the Committee by any general or special order in this behalf to order prosecutions. The resolution passed by the Committee in the year 1943 did authorise the President & Vice-President of the Committee to order such prosecutions. It is not alleged that that resolution was ever set aside or modified by the old or the new Committee. It follows, therefore, that the President of the Committee had the requisite authority under the resolution, which still continues in force to order the prosecution. As already stated, the change in the personnel of the Committee did not in any manner affect the validity or the binding nature of the resolution of the year 1943. It must, therefore, be held that the prosecution of Majid in this case was duly authorised & it was not illegal.

13. The words "some person authorised by the Board" occurring in Section 814, Municipalities Act have been the subject of interpretation by this Court as well as by the Oudh Chief Ct. In *Emperor v. Abdul Razzaq*, A. I. R. (28) 1941 Oudh 472, one Abdul Razzaq was prosecuted, under Section 178/185, Municipalities Act, upon the complaint of the Secretary of the Municipal Board of Khairabad. The case came up for hearing before the Bench Mag. of Khairabad, who by a majority dismissed the complaint on the ground that the Secretary was not authorised to institute the complaint against the accused. The Municipal Board of Khairabad went up in revision before the Dist. Mag. of Sitapur, who made a reference to the Chief Court & recommended that the order passed by the Bench Magistrates dismissing the complaint & acquitting the accused be set aside & the case be tried on the merits. The resolution of the Board authorising its Secretary, Mr. Daulat Singh, to institute prosecutions was passed in the year 1917 ; & it was contended that it was not open to the successor of Mr. Daulat Singh, without being expressly empowered by name in that behalf to institute the proceedings against the accused. Overruling this contention Ghulam Hasan J. observed that:

"the words 'some person authorised by the Board' do not necessarily mean that the person authorised must be mentioned by name. It seems to me that these words are comprehensive enough to include within its purview the power to delegate authority to an officer of the Municipal Board by virtue of his office as well & not necessarily by name only."

In support of the above observation, reference was made to a decision of this Court in *Mohammad Yusuf v. Emperor*, A. I. R. (16) 1929 ALL. 901. In that case the Municipal Board of Banaras had passed a resolution empowering the police to prosecute for certain offences under the Municipalities Act, & the complaint was filed by a Sub-Inspector of Police, under the orders of the Superintendent of Police. There it was held that the delegation of power as contemplated by Section 314, Municipalities Act, was perfectly valid & the complaint was properly instituted. The resolution of the Board was passed in the year 1917, long before the prosecution was launched; it empowered the police to prosecute for certain offences under the Municipalities Act & the Superintendent of Police was requested by the Board to issue instructions to officers in-charge of police stations in terms of

the resolution.

14. Learned counsel for the Notified Area Committee invited my attention to a recent decision of the Lucknow Bench of the Allahabad H. C. reported in *Madan Lal v. Kali Prasad*, A. I. R. (37) 1950 ALL. 108. That was a case under the U. P. (Temporary) Control of Rent and Eviction Act (III [3] of 1947). Under Section 3 of that Act the permission to file a suit for ejectment is to be given by the 'District Magistrate' which term includes "any person authorised by him to perform any of his functions under the Act." The District Magistrate for the time being had authorised another officer to perform his functions under the Act; & that officer had given the permission. By the time the suit was filed the District Magistrate, who had delegated his functions, was transferred; & the question arose whether the permission was valid. It was held that the power of delegation had been given to the District Magistrate as a functionary & not to the person by name & that the functionary was permanent & there was a permanent succession to the office. After referring to Section 18, U. P. General Clauses Act, it was pointed out that an order passed by any particular individual in his capacity as District Magistrate must be deemed to be an order passed by his successor, in-office when he is succeeded by another person & it is not necessary that a successor should pass a fresh order to keep in effect the previous order of his predecessor ; that it is up to the successor to change the order of his predecessor if he wants to, but so long as the order is not changed it shall continue to be effective until it is changed by the successor; & that it makes no difference that the officer who gave the permission was not separately authorised by the successor of the District Magistrate who had delegated his powers to that officer.

15. Similarly, it is contended, in this case the previous committee having authorised the President of the committee to sanction prosecutions it was not necessary for the new committee to again authorise its President & that the authority given by the old committee was effective so long as it was not rescinded or modified by the new committee. I, therefore, hold that the President of the new committee could act under the authority of the resolution passed by the old committee & that the prosecution launched by him was perfectly legal. In this view of the matter, the reference must be accepted. Accordingly, the reference made by the learned Ses. J. is accepted, the order of acquittal passed by the trial Court is set aside & the retrial of Majid according to law by the same Magistrate or any other competent Magistrate to whom the case may be sent by the District Magistrate is ordered.