

Tahir Hussain vs District Board Muzaffarnagar on 25 January, 1954

Author: Ghulam Hasan

Bench: B.K. Mukherjea, V. Bose, Ghulam Hasan

CASE NO.:

Writ Petition (civil) 26 of 1953

PETITIONER:

TAHIR HUSSAIN

RESPONDENT:

DISTRICT BOARD MUZAFFARNAGAR

DATE OF JUDGMENT: 25/01/1954

BENCH:

M.C. MAHAJAN (CJ) & B.K. MUKHERJEA & S.R. DAS & V. BOSE & GHULAM HASAN

JUDGMENT:

JUDGMENT AIR 1954 SC 630 The Judgment was delivered by : GHULAM HASAN GHULAM HASAN J. : This petition under Article 32 of the Constitution raises the question of the constitutional validity of bye-law No. 2 made by the District Board, Muzaffarnagar, U. P., which is challenged as being 'ultra vires' the powers of the Board under Section 174(2)(1) of the United Provinces District Board Act X of 1922 and as being an infringement of the fundamental right of the petitioner under Article 19(1) (g) of the Constitution.

2. The petitioner is a tenant of certain land in village Banat in the District of Muzaffarnagar. He owns a piece of land measuring 35 bighas near this village and holds a market (Painth) for sale of cattle on this land every Wednesday, and charges some commission on sales. The petitioner says that in consideration of this commission he looks after the comfort & convenience of the public visiting the market. The District Board of Muzaffarnagar owns no. land in the village, nor holds any market therein. It is alleged that the petitioner & his partner were served with a notice by the District Board not to hold the market and to show cause why they should not be prosecuted. This notice was issued under bye-law No. 2 which is to the following effect :

"No person shall establish or maintain or run any cattle market in the District within the jurisdiction of the Board"

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The question is whether the aforesaid bye-laws is 'ultra vires' the powers of the District Board and

whether it violates the fundamental right of the petitioner to carry on his business within the meaning of Article 19(1)(g) of the Constitution.

Section 174 of the U. P. District Board Act, 1922 deals with the powers of Boards to make bye-laws. Section 174 (1) says that "A board by special resolution may, and where required by, the Provincial Government shall, make bye-laws applicable to the whole or any part of the rural area of the district, consistent with this Act, and with any rule, for the purpose of promoting or maintaining the health, safety, and convenience of the inhabitants of such area and for the furtherance of the administration of the district under this Act"

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Sub-section 2(1) says that the Board may in exercise of the said power make any bye-laws regulating poor houses, orphanages, libraries, asylums, veterinary hospitals, 'markets', staging-houses, inspection houses, public parks and gardens, encamping grounds, sarais and paraos, and other public institutions.

These provisions show that the power of the Board to make bye-laws is to be exercised for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the area within its jurisdiction and that this power includes the power to regulate markets as mentioned in sub- section 2(1). The bye-law passed by the District Board is not one passed for regulating the market but for prohibiting the petitioner from holding it. Such a bye-law in face of the provisions of section 174 is obviously beyond jurisdiction. The bye-law as well as the order under it interferes with the fundamental right of the petitioner under Article 19(1)(g) and prevents him from carrying on the business of holding the market.

3. This court had to consider the validity of a more or less similar bye- law made by the Municipal Board, Kairana which provided that no. person shall establish any new market or place for wholesale transactions of vegetables without obtaining the previous permission of the Board, and another bye-law which permitted the grant of a monopoly to a contractor to deal in wholesale transactions at the place fixed as a market. The monopoly to do wholesale business in vegetables was auctioned by the Board to the highest bidder and a place was also fixed as the market where such business could be carried on. A person who had been carrying on wholesale business in vegetables before the bye-laws came into force applied for a license to carry on his business at his shop but his application was rejected and he was prosecuted for contravention of the bye-laws. This court upheld the fundamental right of the aggrieved person under Article 19(1)(g) and held that the prohibition imposed by the bye-law became absolute in the absence of provisions authorising the issue of a licence and as the Municipal Board had put it out of its power to grant a license by granting a monopoly, the restrictions imposed were not reasonable within the meaning of Article 19(1) (g) of the Constitution & the bye-laws were accordingly void. See - 'Rashid Ahmed v. Municipal Board, Kairana', 1950 AIR(SC) 163 (A).

4. We hold that the bye-law No. 2 is void as being in conflict with the fundamental right of the petitioner under Article 19(1)(g) of the Constitution and the order passed thereunder cannot be allowed to stand. We accordingly set it aside with costs to the petitioner against the respondent.