

RIGHT TO CARRY ON TRADE

SUPREME COURT'S JUDGMENT

(FROM OUR LEGAL CORRESPONDENT.)

NEW DELHI, Feb. 27.

On a petition made under Article 32 of the Constitution by Mohamad Yasim, a wholesale dealer in vegetables carrying on his business in Jalalabad, U.P. for the enforcement of his right to carry on trade guaranteed by Article 19(1) (G), the Constitution Bench of the Supreme Court presided over by the Chief Justice Mr. Patanjali Sastri to-day declared certain bye-laws framed by the Town Area Committee of Jalalabad to be *ultra vires* of the Constitution.

The Committee had given by auction the contract for sale of vegetables and fruits and for collecting the commission for the current year to one Bishambar. It had not set up any market nor had it framed any bye-laws for the issue of licences to the vegetable and fruit merchants and therefore it was contended on behalf of Mohamad Yasim that by granting a monopoly of the right to do wholesale business in vegetables and fruits to Bishambar, the Committee had in effect totally prevented him from carrying on his business and had thereby infringed his Fundamental Right under Article 19(1) (G) of the Constitution. It was also argued that the Committee had no legal authority to impose a tax of the kind it had sought to do and the imposition of a tax calculated at one anna in the rupee was in the nature of a sale-tax and could not be regarded as a licence fee and such unauthorised impost constituted an illegal restraint on his Fundamental Right under Article 19(1) (G).

Mr. Justice Das, who delivered the unanimous judgment of the court, said that in their opinion, the bye-laws which imposed a charge on the wholesale dealer in the shape of the prescribed fee, irrespective of any use or occupation by him of immovable property vested in or entrusted to the management of the Town Area Committee, including any public street, were obviously *ultra vires* of the powers of the Committee and therefore the bye-laws could not be said to constitute a valid law which alone might, under Article 19(6) of the Constitution, impose a restriction on the right conferred by Article 19(1) (G). In the absence of any valid law authorising it, such illegal imposition would undoubtedly operate as an illegal restraint and would infringe the unfettered right of the wholesale dealer to carry on his occupation, trade or business which was guaranteed to him by Article 19(1) (G) of the Constitution.

His Lordship directed the Jalalabad Town Area Committee not to prohibit Mohammad Yasim from carrying on the business of a wholesale dealer in vegetables and fruits within the limits of Jalalabad until proper and valid bye-laws were framed.

On the basis of the decision in Mohamad Yasim's case Their Lordships of the Supreme Court to-day allowed the petition filed under Article 32 of the Constitution by Sri Ram, a vegetable trader of Khatauli, Uttar Pradesh, raising points similar to those in the previous case. They passed the same orders as in the last case.