
(1907) 06 CAL CK 0002
In the Calcutta High Court

Bipin Behari Ghose

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 08-06-1907

Acts Referred:

Calcutta Municipal Act, 1899 — Section 198, 466

Citation : (1907) ILR (Cal) 913

Hon'ble Judges : Stephen, J;Coxe, J

Bench : Division Bench

Judgement

Stephen and Coxe, JJ.—The petitioners have been convicted of an offence under Sections 466 and 574 of the Calcutta Municipal Act 1899; namely, permitting premises to be used for a purpose specified in Schedule XVIII to the Act, namely, storing lime, without a license. They obtained a Rule calling on the Municipal Magistrate to show cause why this conviction should not be set aside on the ground that they had a license under Section 198 of the Act. The short point that we have to decide is whether the holder of a trading license, i.e., a license u/s 198, is obliged to take out a license u/s 466. The question turns chiefly on the construction of the rules in Schedule II of the Act. But there are a few points, connected with the contents of the Act which it is convenient to consider first.

2. Section 198 occurs in Part IV of the Act, headed "Taxation," and in Chapter XIV, headed "Tax on Professions, Trades and Callings." It imposes a liability on any person carrying on a profession, trade or calling indicated in Schedule II to the Act, to take out an annual license there prescribed. The object of the enactment is, as is indicated by the headings and other contents of the Part and Chapter, to provide a revenue for the carrying out of the purposes of the Act.

3. Section 466 occurs in Part V of the Act, headed, "The Public Health, Safety and Convenience," and in Chapter XXIII, headed "Regulation of Trades, Factories, etc." It enacts, among other things, that no one shall use premises for any of the purposes mentioned in Schedule XVIII without a license. The license is not like a trading license made an annual one by the section by which it is made

necessary: though it is treated as annual by Section 108 of the License Manual. By Section 467 the Corporation is to fix a scale of fees for the licenses, none of which are to exceed" Rs. 500, "or to be less than the amount otherwise payable for a trade or profession license under Schedule II."

4. From this it appears that the purposes for which the two licenses are made necessary are widely different, and that there is no necessary connection between the two. Also Section 467 seems to contemplate a liability to take out licenses under both sections in respect of one business.

5. Were further differences between the licenses under the two sections required, they might be found in the two Forms employed by the Corporation in granting them, Nos. 88 and 89 in the License Manual, where the imposition of terms in the license u/s 466 seems essential to its purpose.

6. The petitioner does not, contend that there is anything in the Act to suggest that he need not take out a license under both sections, but he relies on the rules, contained in Schedule II, which indicate the fees payable for trades etc., the carrying on of which is taxed u/s 198. The Schedule begins with a table showing the fees to be paid by persons carrying on different trades, etc. In some cases the same sum is to be paid by all persons carrying on a trade, in others the amount varies according to the value of the premises where it is carried on. By Rule (2) licenses in the former case are denned, though clumsily only by inference, as personal licenses; in the latter (and a few others} expressly as local licenses By Rule (7) "where any person practices a profession, trade or calling for, which a personal license should be taken out, and is also the owner or lessee of a place of business for which a local license should be taken out, he shall, if the Chairman so directs, take out both a personal and a local license; provided that where the place of business is auxiliary to the practice of the profession, trade or calling, only one license shall be required, and such a license shall either be personal or local as the Chairman may direct.""

7. The petitioner carries on the business of a lime-trader, and has taken out a license accordingly, u/s 198, and argues bat as his place of business is auxiliary to his calling only one license is required, and that he cannot be called on to take out a license u/s 466. This argument entirely overlooks the difference between a Schedule And an Act, The Schedule in this ease deals with a particular tax, and shows how its amount is to be ascertained in every case where it is payable. The rules are framed for this purpose alone, and cannot be read as applying to anything except the subject matter of the Schedule. The effect of Rule (2) is confined to the table of fees in Rule (1), for the proper application of which some such rule is obviously necessary. The same applies to Rule (7), which is equally necessary for the same purpose. If a vakil, who requires a personal license (No. 8) keeps a printing press, which makes him liable for a local license (No. 12, or if a dealer in precious stones (No. 17) is a shopkeeper (Nos. 7, 13, 28 &c), a question will arise which it requires Rule (7) to settle. To extend the operation of these rules beyond the Schedule, would be to give them an effect which it was

obviously never intended that they should have, and which is plainly opposed to the general scheme of the Act. It follows that the taking out of a license u/s 198 is in itself no excuse for not taking out another u/s 466, and that the scheduled rules that apply to the one have no application to the other. The conviction of the petitioner is, therefore, good and the Rule is discharged.