
(1949) 05 CAL CK 0013
In the Calcutta High Court

Chairman of the District Board

APPELLANT

Vs

Bagala Kumar Chatterjee

RESPONDENT

Date of Decision : 12-05-1949

Acts Referred:

Bengal Local Self-Government Act, 1885 — Section 100A, 100D

Citation : AIR 1949 Cal 658 : (1950) CriLJ 33

Hon'ble Judges : Harries, C.J.; J.P. Mitter, J

Bench : Division Bench

Judgement

Harries, C.J.—This is a reference made by the learned Sessions Judge of Hooghly recommending that a certain order of acquittal be set aside and that a criminal case be sent back to a learned Magistrate for trial according to law.

2. The case for the prosecution was that the opposite party, Bagala Kumar Chatterjee, held a Bishahari Jhapan Mela, at Debipur on 21st August 1947 without any licence from the petitioner, the Hooghly District Board, as required by 8. 100A, Bengal Local Self-Government Act of 1885. It is said that by holding the mela the opposite party committed an offence punishable u/s 100D of that Act.

3. The opposite party contended that he did not hold the said mela or fair at Debipur as alleged by the petitioner and the case was in due course tried by Sri P. Naskar, a Magistrate of the First Class at Chinsurah. He did not go into the merits of the case, but he acquitted the opposite party holding that the District Board were not empowered by law to issue license 3 for melas or fairs u/s 100A of that Act. The matter came to the notice of the learned Sessions Judge and he has pointed out that the judgment of the learned Magistrate is clearly erroneous.

4. Section 100a, Bengal Local Self-Government Act is in these terms :

It shall be lawful for a District Board to require the owner or the lessee of a fair or mela or an owner or a lessee of land intending to establish a fair or mela thereon, to obtain a license in this behalf from the District Board on such terms

and conditions and on payment of such fees as the Local Government may prescribe by rules made u/s 138.

5. It is clear that this section empowers a District Board to require persons who propose to hold a mela to obtain a licence. The learned Magistrate, however, was of opinion that the Hooghly District Board could not insist on the opposite party obtaining a license because no rules had been framed by the Local Government u/s 13S, governing the terms and conditions upon which such licenses should be granted or the payment of fees for procuring a license. The learned Magistrate was of opinion that without these rules the District Board could not insist on the opposite party obtaining a license u/s 100A, " Bengal Local Self. Government Act.

6. The learned Sessions Judge, however, points out that rules have been framed u/s 138 of the Act, and he actually refers to the Notification No. 5081 LSG of 5th November 1934 and the heading of the Notification is ".Rules regulating the grant of licenses for holding fairs and melas and fixing the fees in respect thereof". It has been argued by the opposite party, however, that Section 138, contemplates rules being made for every District Board. But it appears to me quite clear that the rules can be made applicable to all District Boards. Section 138 reads:

It shall be lawful for the Local Government to make rules consistent with this Act for any District Board or Local Board or Union Committee for the purposes of

If the Local Government can make it for any Board it can make it for all Boards and that is what it did in this notification.

7. It is then said that the section does not entitle the Government to make rules respecting melas other than agricultural melas. Section 138 (p) reads:

Rules regulating the establishment and maintenance of staging bungalows and sarais, the holding of fairs and exhibitions for agricultural purposes and the granting of licenses for holding fairs or melas and fixing the fees in respect thereof

8. It is urged by learned Advocate on behalf of the opposite party that this only applies to the holding of fairs and exhibitions for agricultural purposes and this mela was not a mela for agricultural purposes. But the words "for agricultural purposes" only govern the words "holding of fairs and exhibitions". Then follow the words "and the granting of licenses for holding fairs or melas and fixing the fees in respect thereof". The words "fairs and melas" there are not qualified by any other words and would cover all fairs and melas. I think it is quite clear that the Local Government had power u/s 138 (p) to make rules for the granting of licenses for melas or fairs other than agricultural fairs.

9. It is to be observed that on both January 1942 these rules made by the Notification dated 6th November 1934 were amended by the insertion of an explanation below B. I of the said rules. The explanation is as follows :

Pair or mela includes a place of pilgrimage or of a religious gathering of the public in which there may be buying and selling thereby necessitating sanitary arrangements.

This explanation makes it clear that "fair or mela" in Section 138 (p) cover fairs or melas other than those held for agricultural purposes.

10. It was eventually suggested that the Hooghiy District Board had not made any bye-laws and, therefore, could not prosecute. This is not a prosecution for breach of any bye-laws. This is a prosecution for breach of the statutory enactment, a breach of Section 100A, Bengal Local Self Government Act, and the prosecution is one expressly permitted by Section 100D of the Act.

11. Lastly, it was said that we should not interfere because this order of the Magistrate was an order of acquittal. This Court will not readily interfere with an order of acquittal. But here the learned Magistrate has held quite wrongly that a District Board has no power to insist on a license. To allow this case to stand would be to allow a very bad precedent.

12. The learned Sessions Judge has recommended that the order of acquittal should be set aside and the case should be sent back to the learned Magistrate to be decided on the merits. The learned Magistrate will be bound to hold that the District Board had power to insist on a license and he must then go into the question whether or not a mela or fair was held and whether or not it was held without a license. There are matters which he has not considered and will have to consider when the matter is reheard.

13. In the result, therefore, this reference is accepted. The order of acquittal of the learned Magistrate is set aside and the case is sent back to him to be reheard and determined according to law and in accordance with the observations made in this judgment.

J. P. Mitter J.

14. I agree.